4257.

SUPREME COURT OF THE UNITED STATES.

No. 143.

LEWIS ROGERS, APPELLANT,

vs.

JOSEPH G. LINDSEY, HENRY S. ATWOOD, AND JOHN S. BENNETT.

ON APPEAL FROM THE CIRCUIT COURT, UNITED STATES, FOR THE SOUTHERN DISTRICT OF ALABAMA.

INDEX.

	Original.	Print.
Bill of complaint	2	1
Exhibits referred to in bill	23	9
Writs of subpœnas and marshal's returns	50	29
Answer of Joseph G. Lindsey	54	31
" John S. Bennett	68	36
Pluries subpœna vs. Henry S. Atwood and marshal's return	77	40
Answer of Henry S. Atwood	79	41
General replication of complainant	83	43
Testimony of defendants	85	44
Decree	117	59
Appeal prayed	118	59
Appeal bond	119	60
Clerk's certificate	120	60

[GIDEON, Print.]

UNITED STATES OF AMERICA.

Southern district of Alabama, circuit court of the United States, for the fifth judicial circuit and southern district of Alabama. In chancery.

Pleas in equity had before the hon. the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, at a term thereof, begun and held in and for said district at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and fifty. Present, his honor John Gayle, judge of said court.

LEWIS ROGERS
vs.
JOSEPH G. LINDSEY,
HENRY S. ATWOOD, &
JOHN S. BENNETT.

Be it remembered that heretofore, to wit, on the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and forty-six, Lewis Rogers, by Stewart and Easton, his solicitors, filed in said court his bill of complaint against Joseph G. Lindsey, Henry S. Atwood, and John S. Bennett, in the words and figures following, to wit:

Bill, &c.

To the honorable the judges of the circuit court of the United States, for the southern district of Alabama.

Lewis Rogers, who is a citizen of the State of New York, brings this his bill against Joseph G. Lindsey, Henry S. Atwood, and John S. Bennett, who are citizens of the State of Alabama, and residents of the southern district thereof. And, thereupon, your orator showeth unto your honors, that your orator was in the year 1836, and prior to that time, a member of the firm of Rogers & Gray, which firm was composed of your orator and James Gray, doing business as merchants, and dealing largely in the produce of the country, and in shipments to foreign countries, and in bills of exchange, and in all other matters connected with a large and widely extended commercial business. That in said year your orator's said house, then doing business at Richmond, in the State of Virginia, purchased, in the regular course of trade from the said Joseph G. Lindsey, a large amount of bills of exchange on the house of Goodman, Miller & Co., of Mobile, of which about the sum of twenty thousand dollars were not paid, and were protested. That your orator's house subsequently (in 1837) effected a settlement with said Goodman, Miller & Co., for said protested bills, and received in payment thereof about an equivalent sum in promissory notes, made and endorsed by various individuals in Alabama, and all of which were endorsed by said Joseph G. Lindsey. That none of said notes received had reached their maturity, and among them was one made by Bissell & Carville, a business firm resident then at Carlowville, in Dal-

las county, which was dated the 20th of April, 1837, in favor of and endorsed by the said John S. Bennett, payable on the first day of January, 1838, for three thousand two hundred and ninety-seven $\frac{100}{100}$ dollars, and negotiable and payable at the Bank of Mobile; which note was endorsed by said Goodman, Miller & Co., and as aforesaid by the said Joseph G. Lindsey, and to which your orator begs leave to refer as often as may be necessary in this bill. And your orator further showeth unto your honors, that said note was not paid when it fell due, but was protested for non payment; and that a large amount of the other paper received at the same time from Goodman, Miller & Co., at the same time was also protested in like manner. And that your orator's commercial house did, about the first of March, 1838, institute suit against many of the parties to the said notes, so due and protested, and among the rest against the said John S. Bennett, Goodman, Miller & Co., and Joseph G. Lindsey, as endorsers of said note made by Bissell & Carville as aforesaid, in the circuit court of the United States, for the southern district of Alabama. And that on the tenth day of March, 1840, the said Rogers & Gray recovered a jugment on said note against said John S. Bennett, for three thousand eight hundred and seventy-five dollars; and that judgments were recovered against said Goodman, Miller & Co., and the said note of Bissell & Carville, and against the several parties to the other paper, who were sued as aforesaid; that after the recovery of said last mentioned judgment, to wit, on the day of 18 , the partnership between your orator and said James Gray was dissolved, and on said dissolution, and by the stipulations and terms thereof, the entire interest in said judgments above mentioned, and the said debts above described, was assigned and transferred by said Gray to your orator; since which time your orator has been the sole owner thereof, and alone entitled to control and collect the same.

And that afterwards, say in May or June, 1840, the said Joseph G. Lindsay came to the city of Richmond, at that time the residence of your orator, and made propositions to your orator for the settlement of his liabilities as endorser of said paper, received as aforesaid from Goodman, Miller & Co. by Rogers and Gray, the said Lindsay representing to your orator that, owing to the embarrassed state of the times, he could not pay said liabilities. And also representing to your orator that all the other parties to the paper referred to were insolvent, that nothing could be made out of them by your orator, and that he, the said Lindsay, proposed to take up said paper, or take a transfer of the judgments which your orator had recovered on the said paper, for which he would give a note made by himself for twenty thousand dollars, endorsed by Stephen W. Andey, Adam Carson, John Davis, and James Tomlinson, all citizens of Alabama, and all of whom he represented to your orator as being perfectly solvent and able to pay said note, provided your orator would make a new advance to him, the said Lindsay, of ten thousand dollars, upon paper made by one Hudgings, of the State of Virginia. And your orator saith, that upon such representations made by said Lindsay, in relation to all the parties upon said twenty thousand

dollar note, and upon inquiry made by a person to whom your orator was referred by said Lindsay, and in whom your orator was disposed to place some degree of confidence, and not from any confidence in Lindsay himself, and also with the view of closing up as speedily as possible the outstanding business of said Rogers and Gray, your orator did take from said Lindsay his own promissory note for twenty thousand dollars, drawn up and endorsed as aforesaid, and did advance to him ten thousand dollars on said paper of Hudgings by accepting two drafts drawn by said Lindsay on your orator for five thousand dollars each, one payable on the first of December, 1840, the other payable on the first of January, 1841, both in favor of William Tod, and by paying said drafts at their maturity to the persons to whom in the course of Lindsay's transactions he had passed them. And your orator saith, that said note for $20,000 fell due the first day of January, 1841, and was protested for non-payment, of which the endorsers were all duly notified; and your orator begs leave to refer to copies of said promissory note and the protest thereof, and said two bills of exchange accepted by your orator, which are herewith exhibited, and marked A, B, and C, and to the originals which he will produce as your honor may direct.

And your orator further charges, that upon receiving said note for $20,000 and said paper on said Hudgings from said Lindsay, and agreeing to accept the drafts of said Lindsay for $10,000 as aforesaid, your orator gave to said Lindsay a letter conferring authority on him in relation to said paper, and the judgment recovered thereon as aforesaid, in Alabama; but your orator charges, that the authority thus vested in Lindsay was intended only to enable him to manage said business, and that he was to account to your orator in the court that the said note for $20,000 was not paid, but your orator has no copy of said letter; and your orator begs leave to refer your honor to a list of said paper and of the said judgments, the control of which the said Lindsay thus obtained from your orator, which is herewith exhibited, marked D, which your orator prays may be taken as a part of this bill; and also to refer, as often as may be necessary, to any or all of the records of said judgments which are to be found in the files and among the records and proceedings of the said court, but more particularly to the record of the judgment of Rogers and Gray against John S. Bennett, and to the proceedings thereon had. And your orator further charges, that said Lindsay held out to him false inducements, and made false representations, in relation to all the foregoing matters; that he deceived your orator as to the solvency of the endorsers to the note of $20,000, whom he represented as men of most undoubted means, (particularly the said Carson, on whom he told your orator he might entirely rely,) and who would never allow their names to be dishonored; and he promised, for himself, that he would take care to protect their names by paying the note himself; and that, at all events, if he did not, that they were able and would do so; and that the note was as good as names in Alabama could make it; that in fact, he, the said Lindsay, had taken care to

secure the best men, desiring on his part amply and completely to secure the debt for which he and others were bound to Rogers and Gray. Whereas, your orator charges, that the said Lindsay knew that not one of the said endorsers on said note was at the time worth the amount of it; and he knew further that all of them together were not worth it; and in fact, that they were all either totally insolvent, or on the verge of insolvency; and had neither money, nor property, nor credit, whereby to meet such a demand; were utterly reckless, as was said Lindsay himself, whether their names on paper for a large or a small amount, and never intended to pay said note, or provide for its payment in any manner; and that said Lindsay knew all this to be true at the time he procured the note to be endorsed, and intended it as a means whereby to procure more money from your orator, in which your honors have seen he was too successful.

That he deceived your orator by his representations of the lack of pecuniary ability of the parties to the notes received by Rogers and Gray from Goodman, Miller & Co., and which were sued, and in judgment as aforesaid; that he exaggerated the bad prospects of collection, and impressed your orator with the belief that nothing could ever be made on any of said claims, which your orator credited the more readily from the then difficulties of the times, and the general failure at the south to make prompt payments to their northern creditors; when at the same time your orator believes that said Lindsay knew, and he so charges, that several of said debts could be readily collected, some in whole, and others in part; and that a considerable part of the whole might be realized by the diligent attention of the attorneys in whose charge the said cases were, by compromising, compounding, and arranging, but more particularly that said Bennett was able to pay the judgment recovered as aforesaid against him.

And your orator further charges, that the said Lindsay had no sooner got authority to act in regard to said judgments, than he proceeded, as your orator is informed, and believes, to arrange and settle upon such terms as he could, several of the said judgments, the particulars of which settlements your orator is not informed of; but that he collected moneys, and paid debts, and bought property; but how much money he collected, or what debts he paid, or what property he bought, your orator does not with certainty know, but prays a discovery, so that he may be informed thereof. But the said Lindsay, your orator charges, knew the condition of the said John S. Bennett, and believed he was able to pay the judgment against him; and that he would pay upon coercion; and that said Lindsay intended, by obtaining the contract and management of said judgment, to compel said Bennett to pay; and that he contrived the means of doing so before the control of said judgments were given to him. And your orator further charges, that the said Lindsay presented to the attorneys of your orator, in Mobile, the evidence that satisfied them of Lindsay's right to direct their subsequent proceedings in the cases referred to; and paid them a certain amount in satisfaction of the fees or commissions for the services per-

formed in that behalf for Rogers and Gray; and that he caused, on the 24th of December, 1842, an execution to issue from the said circuit court, upon said execution of Rogers and Gray, against John S. Bennett, which he directed to be levied on the following described land, to wit: The northwest quarter of section 21; the northwest and northeast quarters of section 15, township 13, of range 12; southeast and southwest quarters of section 19, township 14, of range 14; also a lot of land situated in Carlowville; bounded by the public road, the lands of Thomas D. Rumphe, and the lands of the Carlowville leather manufactory, containing four acres, all levied on as the property of John S. Bennett, and situated in the county of Dallas, State of Alabama; and that the marshal made on said execution the further return that said land was not then sold for want of bidders; a copy of which said execution, marked E, and which, and to the original on file, your orator begs leave to refer to as often as may be necessary. And your orator further charges, that said Lindsay did cause a pluries fi. fa., in the nature of a venditioni exponas, to issue from said court on the sixth day of January, 1844, addressed to the said marshal, by which the marshal was directed to advertise and sell the said lands levied on as aforesaid; and that said lands failing thus to satisfy the said judgment, then to levy for the residue on the goods, &c., of the defendant, John S. Bennett.

And that in pursuance of said order the said marshal did advertise the before mentioned property for sale at public auction, and did sell the same on the day of , 1844, to one Henry S. Atwood, all for the sum of one hundred and six dollars; and to said Atwood, your orator is informed and believes, and so charges, that said marshal did make a deed for said lands, and that said price is grossly inadequate, the said lands being valuable.

And your orator is informed and believes, and therefore charges, that said Atwood knows full well that the said Lindsay had obtained control of the said judgment by contrivance and fraud; that said Atwood lent himself to aid Lindsay in the transaction of purchasing and taking title to this land, and that said purchase was intended to enure to Lindsay's benefit, altogether or in part; that in fact no money passed from said Atwood for the payment of said land, and that said purchase was a fraudulent contrivance, in which both the said Lindsay and the said Atwood participated, to the injury of your orator.

That the said Atwood pretended to own an interest in said judgment, and that both Lindsay and Atwood acted together with the common object in the procuring the execution, selling the land, and buying it in.

And your orator is informed and believes, and therefore charges, that said Lindsay did apply for the benefit of the act of Congress, passed on the 19th day of August, 1841, entitled "An act to establish a uniform system of bankruptcy throughout the United States," and that he was discharged as a bankrupt on the day of , 184 ; but your orator charges that said judgment against John S. Bennett was not assigned by said Lindsay to the assignee in bankrupcy, but that the

said Lindsay, either because he did not, when he filed his schedule in bankruptcy, pretend that said judgment was his property, or because if he did so pretend of an intention to fraudulently withhold the same from his creditors, did not transfer and assign the said judgment, but has notwithstanding his bankruptcy continued to act as if it belonged to him.

And your orator is informed and believes, and therefore charges, that said Atwood knew also that the said Lindsay was a bankrupt, and could not legally control as his own said judgment against Bennett, and that whatever transactions said Atwood had with said Lindsay in relation to said judgment, were with full notice of the fact, that either your orator's rights were unimpaired to said judgment, or that Lindsay was acting in fraud of the Bankrupt law.

And your orator further saith, that he hath not, till within a few months past, discovered the full extent of the fraud practised on him by the said Lindsay; and it is only very lately that he has been enabled to trace up his acts in relation to the case against Bennett; that your orator resides principally in the city of New York, but is frequently abroad in Europe in pursuit of his business, and has had no time to devote to this matter, and felt, from the apparent hopelessness of getting any thing from said Lindsay, very little disposition to make the exertion to do.

And your orator further saith, that said paper received from Lindsay on Hudgings was not paid at maturity, but was protested and payment resisted by Hudgings, on the ground that Lindsay and Tod had obtained it fraudulently from him, and that your orator submitted to a great sacrifice in disposing of it.

That the said $20,000 note remains unpaid, and that on this large debt all he has received from said Lindsay is the sum of three thousand five hundred dollars, which was paid to your orator on the day of , 184 , and which your orator applied to the general indebtedness of Lindsay, by reason of the Hudgings' debt, and the said $20,000 note. All of which actings and doings of say Lindsay and said Atwood are contrary to equity and good conscience, and greatly injurious to your orator.

In tender consideration whereof, and inasmuch as your orator is remediless in the premises by the strict rules of the common law; to the end, therefore, that the said Joseph G. Lindsay and Henry S. Atwood may upon their respective oaths, to the best and utmost of their respective knowledge, information, and belief, full, true, and perfect answers make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they particularly interrogated.

And more particularly, that the said Lindsay may answer and set forth whether he was not an endorser on all the paper referred to as having been received by Rogers & Gray from Goodman, Miller & Co., in payment of their debt to said Rogers & Gray; whether he was not sued by Rogers and Gray, and judgments recovered against him, as set

forth in exhibit D, appended to this bill; whether he did not, in May or June, 1840, go to Richmond, and propose to this complainant to give him the note referred to for $20,000, in consideration that said Rogers would advance him $10,000 on a certain paper made by one Hudgings, and allow him to manage the collection of the judgments against the parties aforesaid in Alabama; whether he did not represent to complainant that all the endorsers on said note for $20,000 were good and solvent; whether he did not say that each one of said endorsers was good for the amount of the said note; whether he did not tell the complainant that said note would be paid at maturity; and that if he, Lindsay, should fail to *to* pay it, that the said endorsers (but especially the said Carson) were able to pay, and would do so; whether, in fact, all the said endorsers were not at that time under protest for non-payment of notes or bills in Alabama; whether he did not then know the fact of their being so under protest, and if any one was not under protest at that time, which one was not; whether, in fact, all of said endorsers were not at that time embarrassed in their circumstances, and which one, if any, was not so embarrassed; whether, in fact, either of said endorsers could then, or could at any time since, have paid said note; whether all of said endorsers had not then suits against them, and judgments; and whether executions against all of them were not at that time returned "No property found;" and whether he did not tell your orator that little or nothing could be made out of said judgments in Alabama; and whether he did not know at that time that certain of said judgment debtors would, in whole or in part, pay the judgments recovered against them by Rogers & Gray; whether he did not draw the two drafts for $5,000 each; and whether complainant did not pay them; whether the complainant did not agree that he would give to said Lindsay an order on the agent of complainant in Alabama, by which he would be enabled to manage said judgments; but whether in fact it was not expressly understood that said Lindsay was to control said judgments, subject entirely to the condition that he was only to appropriate, to the collection therefrom, to his own use in case said $20,000 note was duly paid; and whether he, said Lindsay, was not in fact made the mere agent of said complainant in this business. And that said Lindsay may answer whether he has not been discharged as a bankrupt; and whether he has not, since his bankruptcy, represented himself as the owner of said judgment against Bennett; and whether he did not cause a levy to be made on the lands of said Bennett, as before mentioned; and whether said lands were not bought at said sale by said Atwood for a grossly inadequate price; and whether the marshal's deed of the same was made to said Atwood, or to whom it was made; and whether, in fact, any money for said purchase was paid to the marshal; if so, whether the money paid, ostensibly as purchase money, was not in fact only for the purpose of satisfying the costs altogether or in part, and what has since the said sale been done by Atwood with said land; whether it was not intended to be held by said Atwood for the benefit in some measure of said Lindsay; and what were the

terms and conditions of the understanding between them. That said Lindsay will further say whether he has not collected moneys in other of said judgment debts, and made settlements and compromises; and, if so, in which, stating the particulars. And that said Atwood answer and say what interest he claims, if any, in said judgment against John S. Bennett; how he acquired it; and when and what he gave for it; and if it was taken for a debt due to Lindsay; if so, what was the nature of that debt; was his interest in it acquired after Lindsay's bankruptcy; whether, in fact, he ever saw any evidence of title to said judgment in said Lindsay; whether he did not purchase said lands under the pretence of having an interest in said judgment, and desiring thus to secure the debt due by Bennett. If said Atwood claims to hold an interest in said judgment from said Lindsay, that he append said assignment to his answer; and that he say whether, in fact, he paid Lindsay any money for said assignment, or whether he received it in consideration of a previously existing debt; and, if so, when the debt from Lindsay to him was created. Let him state the particulars of this transaction, and who has the title to said land; whether it was not understood between Lindsay and himself that they were in some way to participate in the purchase; and whether it was not sold at a grossly inadequate price.

That said Bennett may answer and say whether he did not endorse said note of Bissell and Carville; whether judgment was or not, as aforesaid, recovered by Rogers and Gray thereon; whether said levy and sale of said lands was not made as aforesaid; whether said judgment is not still unsatisfied; and whether said lands were not sold for a grossly inadequate price.

And your orator prays that your honor would decree that the said Joseph G. Lindsay deliver up, to be cancelled, whatever written power or authority the said Joseph may possess from your orator in regard to all the said judgments; that said authority be utterly revoked and annulled; that said Lindsey be decreed to account, before the master in this honorable court, for all the moneys and other things he has received in the settling, arranging, or compromising any or all of said judgments; and that he be decreed to pay to your orator all such sums, with the interest thereon, as he may have collected.

That said Atwood bring into court the deed for said land, to be delivered to your orator, and that he make conveyance of the same to your orator; and that said levy, sale, and purchase of said lands be decreed to stand as a security for the satisfaction to your orator for the judgment due by said John S. Bennett, so far as its true value may extend; which true value your orator is willing to allow as this court may direct; and that your orator may have such other and further relief as the nature and circumstances of his case may require, and as may be meet and proper. May it please your honor to grant to your orator the writ of subpœna, to be directed to the said Joseph G. Lindsey, Henry S. Atwood, and John S. Bennett, thereby commanding them, under a certain penalty, to be and appear before your honorable

court, and then and *to be and appear before your honorable court, and then and* there full, true, and perfect answer make to all and singular the premises, and to abide and perform such further order and decree as to your honorable court shall seem right and equitable. And your orator prays your honor to grant to him a writ of injunction, addressed to the said Joseph G. Lindsey, Henry S. Atwood, and John S. Bennett, restraining the two first named from procuring to be issued any writ of execution on the said judgment against John S. Bennett, or in any of said cases, or from selling or conveying away said lands, or from doing any matter or thing in relation to said judgments or any of them; and restraining the said John S. Bennett from paying the said Lindsey or Atwood, or any attorney or agent, or assignee of them, or either of them, any part of said judgment against him.

STEWART & EASTON,
Complainant's solicitors.

Exhibit A.—(*Note* 1.)

$20,000. MAY 10th, 1840.

On the first day of January, one thousand eight hundred and forty-one, I promise to pay to Stephen R. Anders, or order, twenty thousand dollars, for value received; negotiable and payable at the Farmers' Bank of Virginia, in the city of Richmond, Virginia.

JOSEPH G. LINDSEY.

Endorsed:
STEPHEN R. ANDERS,
ADAM CARSON,
JOHN DAVIS,
JAMES TOMLINSON.

(*Protest.*)

VIRGINIA, CITY OF RICHMOND, *to wit:*

Be it known to all whom it may concern that, on this fourth day of January, in the year of our Lord 1841, I, Archibald Blair, a notary public in and for the city of Richmond, duly commissioned and qualified, at the request of the president and directors of the Farmers' Bank of Virginia, holders of the original note, a true copy whereof is above written, demanded payment of the Farmers' Bank of Virginia, which being refused and the time limited having elapsed, whereupon I, the said notary, at the request aforesaid, have protested, and do hereby most solemnly protest, as well against the said Joseph G. Lindsey, the payer, as against the endorsers, S. R. Anders, A. Carson, John Davis, and James Tomlinson, and all others whom it doth or may concern, for all loss, damages, principal, interest, costs and charges, sustained, or to be sustained, by reason of the non-payment aforesaid.

In testimony whereof I have hereunto subscribed my hand and affixed my notarial seal, at the city of Richmond aforesaid, the day and year aforesaid.

ARCHIBALD BLAIR,
Notary Public.

Notices of the within protest were directed for J. G. Lindsey to Mobile, Alabama, for Stephen R. Anders, to Monroeville, Monroe county, Alabama; for Adam Carson and John Davis, to Claiborne, Monroe county, Alabama; and for James Tomlinson, Sparta, Conecuh county, Alabama; and put in the post office this 4th January, 1841, by me; also duplicates put in the post office on the 3d January, 1841.

A. BLAIR, *Not'y Pub.*

CITY OF RICHMOND, *to wit:*

This day personally appeared before me, an alderman of said city, Archibald Blair, a notary public, and made oath to the truth of the facts stated in the within protest, 5th January, 1841.

SIMON CULLEN, *J. P.*

Exhibit B.

5,000 dollars. BALTIMORE, *June 19th*, 1840.

On the first day of December next please pay to the order of William Tod five thousand dollars, for value received, and charge the same to account of, yours, &c.

JOS. G. LINDSEY.

To LEWIS ROGERS, esq., *Richmond, Va.*

Endorsed.—Pay H. Alluard, jr., or order.

WM. TOD,
H. ALLUARD, JR.

Pay J. W. Pegram, cashier, or order.

THORN. WILLIAMSON,
Cashier.

Accepted. LEWIS ROGERS.

Exhibit C.

$5,000. BALTIMORE, *June 19th*, 1840.

On the first day of January next please pay to the order of William Tod five thousand dollars, for value received, and charge the same to account of—

JOS. G. LINDSEY.

To LEWIS ROGERS, esq., *Richmond, Va.*

Endorsed.—Pay J. L. Pendleton or order.

WM. TOD.

Pay to the order of Messrs. Jaq. Taylor & Co.

J. L. PENDLETON,
JAQUELIN TAYLOR & CO.
By B. W. RICHARDSON, *Att'y.*

Accepted. LEWIS ROGERS.

Exhibit D.

List of notes received by Rogers & Gray from Goodman, Miller & Co., with the judgments thereon recovered.

1. James H. Sylvester's note, payable to his own order, and by him endorsed - - - - - - - $2,848 06
   Goodman, Miller & Co., 1st endorsers; Jos. G. Lindsey, 2d endorser.
   Judgment recovered by Rogers & Gray in the United States circuit court, 16th April, 1839, against Goodman, Miller & Co., for - - - - - - 3,141 00
   Also in same court, against Jos. G. Lindsey, 11th April, 1839, for - - - - - - 3,146 25
2. Jos. W. Lindsey's note in favor of and endorsed by Charles A. English, for - - - - - 3,500 00
   Also endorsed by Goodman, Miller & Co.
   Judgments recovered in the United States circuit court against Elizabeth A. English, administratix of Charles English, deceased, 17th April, 1839, for - - 3,828 47
   Also in same court against Goodman, Miller & Co., 10th April, 1839 - - - - - 3,836 00
3. Bissell & Carville's note in favor of and endorsed by John S. Bennett, for - - - - - - 3,297 27
   Also endorsed by Goodman, Miller & Co., and by Jos. G. Lindsey.
   Judgment recovered 10th March, 1840, against J. S. Bennett, for - - - - - - - 3,875 00
   Also against Goodman, Miller & Co., 10th April, 1839, and against Jos. G. Lindsey, 11th April, 1839, for 3,556 45
4. Note made by S. W. Oliver, for - - - - 957 90
   Endorsed by Goodman, Miller & Co., and by Jos. G. Lindsey.
   Judgment recovered by Rogers & Gray, as above, in the United States circuit court against Goodman, Miller & Co., on the 11th April, 1839, for - - - 1,058 00
   Also against Joseph G. Lindsey, on same day, for - 1,059 00
5. P. P. Bowen's note for - - - - - 4,068 84
   Endorsed by Goodman, Miller & Co., and by Joseph G. Lindsey.
   Judgment against Goodman, Miller & Co., 10th April, 1849, for - - - - - - 4,488 00
   Also against Joseph G. Lindsey, 11th April, 1839, for 4,487 61
6. William H. Arthur's note for - - - - - 1,660 31
   In favor of and endorsed by Goodman, Miller & Co., and also by Joseph G. Lindsey.
   Judgment recovered against Goodman, Miller & Co., 10th April, 1839 - - - - - - 1,831 00
   Also against Joseph G. Lindsey, 11th April, 1839 - 1,832 00

Exhibit E.

UNITED STATES OF AMERICA,
Circuit court of the United States, for the fifth judicial circuit, southern district of Alabama, ss:

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded, as oftentimes before, that of the goods and chattels, lands and tenements, of John S. Bennett, late in said district, you cause to be made the sum of thirty-eight hundred and seventy-five dollars, with interest thereon from the 10th day of March, A. D. 1840, which Lewis Rogers and James Gray, at a term of said circuit court, begun and held on the second Monday of March, 1840, have recovered against him for damages; also the sum of eighty-two dollars and eighty-four cents, which to the said Lewis, etc., in the same court, was adjudged for costs and charges in this behalf expended, whereof the said John S. is convicted, as appears of record; and that you have the said sums of money before the said circuit court on the second Monday of March next, at the place of holding said court at Mobile, to render to the said Lewis, etc., the damages and costs aforesaid; and have you then and there this writ.

Witness the hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-two. Issued. the 24th Dec., 1842.

Attest: DAVID FILES,
C. C. C., S. D. Ala.

Return. Rec'd in office, 24th Dec., 1842.

The property levied on, as per advertisement, not sold, for want of bidders at Cahawba, Ala.

WM. ARMISTEAD, *U. S. M.*
By N. B. LANE, *D. M.*

Judgment entry on which the foregoing execution issued, to wit:

March term, 1840 (10th March, 1840).

ROGERS & GRAY
vs. } 1627.
J. S. BENNETT.

This day came the plaintiffs, by their attorneys, and the writ issued in this cause being returned executed, and the said defendant being solemnly called, came not, but wholly made default, whereby the said plaintiffs therein against him remain altogether undefended. It is therefore considered by the court, that the said Lewis Rogers and James Gray, plaintiffs, do recover against the said John S. Bennett, defen-

dant, the sum of three thousand eight hundred and seventy-five dollars, $3,785, for his damages, as assessed by the clerk of this court, together with his costs.

Fieri facias issued on said judgment for the amount thereof, with interest from the date of said judgment, and all costs, returnable to the November term, 1840, of said court, and not returned. Alias do. issued 31st Jan'y, 1842, returnable to March term, 1842, and returned by the marshal—"No property found. D. White, D. M." Pluries fieri facias issued as set forth in exhibit E, etc. 2d pluries fieri facias issued on the 6th January, 1844, returnable to March term, 1844, and not returned. 3d pluries fi. fa., issued (marked on execution docket to J. G. Lindsay) on 22d March, 1844 to Nov'r term, 1844, and returned—"Proceedings stopped by order of plaintiff by bill in chancery, the 23d of June, 1844. Wm. Armistead, U. S. M., per H. Wilkins, D. M." 4th plu. fi. fa. issued (by order of and enclosed to A. B. Cooper, of Claiborne) on 1st March, 1845, returnable to April term, 1845, and returned—"Proceedings stopped by an appeal from the chancery to the Supreme Court. Wm. Armistead, U. S. M., pr. H. Wilkins, D. M." And on the 28th day of April, 1848, a 5th pluries writ of fi. fa. issued in said case, returnable to the December term, 1848, of said court, and which was delivered to the marshal, and by him returned as follows: "Rec'd, 29th April, 1848, and on the 16th of May, 1848, I levied this fieri facias on the following named slaves: Antony, 26 years of age; his wife Rose, 24 years; her 4 children, Wallace, Kate, Julianna, Zarry; Juliet, mother of Rose, and her 7 children, Morris, George, Tom, Manuel, Leah, Harriet, Abraham; Lucy, and her 7 children, Francis, Augustus, Catherine, Ned, General, Sam, and Lucy; Ambro, and her seven children, Jacob, Alice, Robin, William, Dover, Affy, Nanny; Pender, and her five children, Judy, Jim, Peter, Amy, Joe; three fellows, Jupiter, John, and Cuffy; four mules and road wagon, and also the following described lands; to wit: S. E. qr. of the N. W. qr. sect. 7; S. E. qr. of the N. E. qr. sec. 7; N. E. qr. of the N. W. qr. sec. 7; N. W. qr. of the N. E. qr. of sec. 7; E. ½ N. E. qr. of sec. 7; N. W. qr. of sec. 8; S. E. qr. of sec. 8; N. E. qr. of sec. 8; N. E. qr. of sec. 9; N. W. qr. of sec. 9, all in township 13, range 11, in the district of lands offered for sale at Cahawba; the said lands lying and being in the county of Dallas, southern district of Alabama.

J. G. LYON,
U. S. Marshal.
By GEO. BANCROFT, *D. M.*

And on the fifth day of June, 1848, at the United States court-house in Mobile, after advertising according to law, I sold the following named slaves, in satisfaction of this execution, to wit:

Anthony, and wife Rose, William, Kate, Julian, and Zany, to Lewis E. Smith, for - - -	$1,325 00
Juliett, Morris, George, Tom, Manuel, Leah, Hannah, and Abraham, to Lewis E. Smith, for - -	2,080 00

Jupiter, Lucy, Francis, Augustus, Catherine, Ned, General, Sam, and Lucy, to Lewis E. Smith, for -	$2,430 00
Cuffy, to Lewis E. Smith, for - - - -	570 00
John, to Sam. B. Ewing, for - - - -	435 00
1 road wagon, to F. H. Lyon, for - - -	35 00
1 mule do. to do. for - - - - -	72 50
1 mule do. to do. for - - - - -	62 50
1 mule do. to Mordecai for - - - -	77 50
1 mule do. to Mordecai for - - - -	55 50
Seven thousand six hundred and forty dollars - -	7,640 00
Six thousand two hundred and ninety-two $\frac{8}{100}$ dollars of which [was] appropriated to pay principal and interest	$6,292 66
One hundred and twenty-six $\frac{74}{100}$ to payment of tax costs	176 74
And four hundred and ninety-nine $\frac{70}{100}$ dollars to pay marshal's commissions, mileage, keeping slaves, advertising, &c., as per bill on file - - -	499 70
Making six thousand nine hundred and sixty-nine $\frac{11}{100}$ -	6,969 11

Therefore I return this execution satisfied, and that there is a surplus of $172.84, subject to the order of court in payment of the costs in chancery between same parties; levy upon lands released, and also released levy upon the following named 14 slaves, and delivered them to attorneys of reputed owners thereof, to wit, Ambro, Jacob, Alice, Robin, William, Dover, Affay, Nancy, Pender, Judy, Jim, Peter, Amy, and Joe, taking receipt therefor.

J. G. LYON, *U. S. M.*"

Mobile, June 5th, 1848.

OFFICE U. S. MARSHAL,
Mobile, 27th December, 1848.

To the honorable the circuit court, United States.

The undersigned, marshal of the southern district of Alabama, respectfully reports: That on the 29th April, 1848, a writ of fieri facias came to my hands in the case of Rogers and Gray vs. John S. Bennett for the sum of $3,872, with interest from the 10th March, 1840, and costs of suit; that in pursuance of said writ he has made, of the personal estate found in possession of defendant, the sum of $6,292.66, which satisfies said writ, see return on fi. fa.; which sum of money he has brought into court according to the order thereof, a copy of which is attached hereto, marked A, and is ready to pay over the same as this honorable court shall direct.

Respectfully submitted,

J. G. LYON,
U. S. marshal.

(A.)

ROGERS and GRAY
vs.
JOHN S. BENNETT.

In this case a motion is made by Joseph G. Lindsey, assignee of the plaintiffs, for a rule on the clerk why an execution should not issue; upon hearing the above motion, after argument by counsel, it is ordered that the above motion be granted, and that the execution do issue; and that the money be brought into court, subject to its future order.

Report of marshal, filed 27th December, 1848.

JOHN FITTS, *Clerk*.

December term, 1848, circuit court United States, January 2d, 1849.

(*Order*.)

ROGERS and GRAY
vs.
JOHN S. BENNETT.

In this case it is agreed, that the fund now in court, under a former order, directing an execution to issue in favor of Joseph G. Lindsey as assignee of the plaintiffs, shall be paid over by the marshal to William J. Ledyard, and shall remain in his hands, subject to the further order of the court, or agreement of the parties. For Rogers and Gray, Stewart and Easton; for Lindsey, J. A. Campbell, Fisher, and Hamilton.

And thereupon it is ordered by the court, that the marshal shall pay over the fund forthwith to the said William J. Ledyard, after deducting all costs and commissions, in pursuance of the above agreement.

Judgment, entries, &c., of April term, 1839, circuit court, United States, southern district of Alabama.

10th April, 1839.

ROGERS and GRAY
vs.
GOODMAN, MILLER & Co. } 1,635.

This day came the parties, by their attorneys; whereupon came also a jury, to wit, C. Stebbins and eleven others, good and lawful men, who being elected, tried, and sworn, upon their oath do say, we, the jury, find for the plaintiffs, and assess their damages at eighteen hundred and thirty-two dollars, ($1,832.) Therefore it is considered by the court, that the said Lewis Rogers and James Gray, plaintiffs, do recover against the said Duke Goodman, James A. Miller, and James W. Goodman, defendants, the said sum of eighteen hundred and thirty-two dollars, the damages aforesaid in manner aforesaid by the jurors aforesaid assessed; together with their costs in this behalf expended. Fieri facias issued on said judgment for the amount thereof,

and all costs, on 2d May, 1839, to fall term, 1839; which was returned by the marshal "no property found."

ROGERS and GRAY
vs.
GOODMAN, MILLER & Co. } 1,636.

10th April, 1839.

This day came the parties, by their attorneys; whereupon came the following jury, to wit, C. Stebbins and eleven others, good and lawful men, who being elected, tried, and sworn, upon their oath do say, that we, the jury, find for the plaintiffs, and assess their damages at ten hundred and fifty-seven $\frac{57}{100}$ dollars, ($1,057.88.) Therefore it is considered by the court, that the said Lewis Rogers and James Gray, plaintiffs, do recover against the said Luke Goodman, James A. Miller, and James W. Goodman, defendants, the said sum of one thousand and fifty-seven $\frac{57}{100}$ dollars, the damages aforesaid in manner aforesaid by the jurors aforesaid assessed; together with their costs in this behalf expended. Fieri facias issued on said judgment for the amount thereof, and all costs, 2d May, 1839, to fall term, 1839; which was returned by the marshal "no property found."

ROGERS AND GRAY
vs.
GOODMAN, MILLER & Co. } 1631.

April 10, 1839.

This day came the parties, by their attorneys; whereupon came the following jury, to wit:

J. M. Tarleton and eleven others, twelve good and lawful men, who being elected, tried, and sworn, upon their oath do say, that we, the jury, find for the plaintiffs, and assess their damages at forty-four hundred and eighty-eight dollars. Therefore it is considered by the court, that the said Lewis Rogers and James Gray, plaintiffs, do recover against the said Duke Goodman, James A. Miller, & James W. Goodman, defendants, the said sum of forty-four hundred and eighty-eight dollars, ($4,488,) the damages aforesaid in manner aforesaid by the jurors aforesaid assessed; together with their costs in this behalf expended.

Fieri facias issued on said judgment for the amount thereof and all costs, on 15th May, *term* 1839, to fall term 1839, which was returned by the marshal, "no property found."

ROGERS AND GRAY
vs.
GOODMAN, MILLER & Co. } 1632.

April 10, 1839.

This day came the parties, by their attorneys; whereupon came the following jury, to wit:

Samuel Warren and eleven others, twelve good and lawful men, who being elected, tried, and sworn, upon their oaths do say, that we, the jury, find for the plaintiffs and assess their damages at thirty-eight hundred and thirty-six $\frac{44}{100}$ dollars. Therefore, it is considered by the court, that the said Lewis Rogers and James Gray, plaintiffs, do recover against the said Duke Goodman, James A. Miller, and James W. Goodman, defendants, the said sum of thirty-eight hundred and thirty-six $\frac{44}{100}$ dollars, (3,836 44,) the damages aforesaid in manner aforesaid by the jurors aforesaid assessed, together with their costs in this behalf expended.

Fieri facias issued on said judgment 15th May, 1839, for the amount thereof and all costs, to fall term 1839, which was returned by the marshal, "no property found."

ROGERS AND GRAY
vs.
GOODMAN, MILLER & Co. } 1633.

April 16, 1839.

This day came the parties, by their attorneys; whereupon came the following jury, to wit:

Samuel Warren and eleven others, twelve good and lawful men, who being elected, tried, and sworn, upon their oaths do say, we, the jury, find for the plaintiffs, and assess their damages at thirty-one hundred and forty-one $\frac{41}{100}$ dollars. It is therefore considered by the court, that the said Lewis Rogers and James Gray, plaintiffs, do recover against the said Duke Goodman, James A. Miller, and James W. Goodman, the said sum of thirty-one hundred and forty-one $\frac{41}{100}$ dollars, ($3,141 18,) the damages aforesaid, in manner aforesaid, by the jurors aforesaid assessed, together with their costs in this behalf expended.

Fieri facias issued on said judgment for the amount thereof, and all costs, 15th May, 1839, to fall term, 1839, which was returned by the marshal, "no property found."

ROGERS AND GRAY
vs.
WILLIAM H. ARTHUR. } 1626.

April 10, 1839.

This day came the plaintiffs, by their attorneys, and the writ issued in this cause being returned executed, and the said defendant being solemnly called, came not, but wholly made default, whereby the said plaintiffs against him remained altogether undefended.

It is therefore considered by the court, on motion, that the plaintiffs do recover against the said defendant their damages; but because it is unknown what damages they have sustained, let a jury come forthwith and assess the same.

Whereupon came a jury, to wit, Charles Stebbins and eleven others, twelve good and lawful men, who being elected, tried, and sworn, upon their oath do say, that we, the jury, assess the plaintiffs damages at eighteen hundred and thirty-one dollars.

It is therefore considered by the court, that the said Lewis Rogers and James Gray, the plaintiffs, do recover against the said William H. Arthur, defendant, the said sum of eighteen hundred and thirty-one dollars, ($1,831,) the damages aforesaid in manner aforesaid assessed, together with their costs.

Fieri facias issued on said judgment for the amount thereof and all costs, on the second May, 1839, returnable to fall term, 1839, and returned by the marshal, "no property found."

ROGERS AND GRAY
vs. } 1875.
E. A. ENGLISH, administratrix.

This day came the parties, by their attorneys; whereupon also came the following jury, to wit:

J. M. Tarleton and eleven others, twelve good and lawful men, who being elected, tried, and sworn, upon their oaths do say, we, the jury, find for the plaintiffs and assess their damages at thirty-eight hundred and twenty-eight $\frac{67}{100}$ dollars.

It is therefore considered by the court, that the said Lewis Rogers and James Gray, plaintiffs, do recover against Elizabeth A. English, administratrix of C. A. English, deceased, defendant, the said sum of thirty-eight hundred and twenty-eight $\frac{67}{100}$ dollars, (3,828 67,) the damages aforesaid in manner aforesaid by the jurors aforesaid assessed, together with their costs in this behalf expended.

Fieri facias issued on said judgment for its amount and costs, 15 May, 1839, to fall term, 1839, and returned by the marshal; "levied, bond taken and forfeited, and stayed by plaintiffs' attorneys; costs paid." Last fi. fa. issued 24th April, 1841, to fall term, 1841, for $487 50, without interest, to pay costs, &c., and not returned.

ROGERS & GRAY
vs. } 1637.
JOSEPH G. LINDSEY.

11th April, 1839.

This day came the parties, by their attorneys; whereupon came the following jury, to wit, J. M. Tarleton and eleven others, twelve good and lawful men, who being elected, tried, and sworn, upon their oaths do say, we, the jury, find for the plaintiffs, and assess their damages at ten hundred and fifty-nine $\frac{57}{100}$ dollars. It is therefore considered by the court, that the said Lewis Rogers & James Gray, plaintiffs, do recover against the said Joseph G. Lindsey, defendant, the said sum of ten hundred and fifty-nine $\frac{57}{100}$ dollars, ($1,059 57) the damages afore-

said in manner aforesaid by the jurors aforesaid assessed, together with their costs in this behalf expended.

Fieri facias issued on said judgment, 2d May, 1839, for the amount thereof, and all costs, to fall term, 1839, which was returned by the marshal, "no property found;" alias issued 23d Oct., 1840, subject to defendant's control; satisfaction erased by defendant on docket, and pluries issued 17th May, 1842, and returned, levy made on lands and sold for $817.

ROGERS & GRAY
vs.
JOSEPH G. LINDSEY. } 1638.

11th April, 1839.

This day came the parties, by their attorneys; whereupon came the following jury, to wit, J. M. Tarlton and eleven others, twelve good and lawful men, who being elected, tried, and sworn, upon their oaths do say, that we, the jury, find for the plaintiffs, and assess their damages at thirty-one hundred and forty-six $\frac{14}{100}$ dollars. It is therefore considered by the court, that the said Lewis Rogers and James Gray, plaintiffs, do recover against the said Joseph G. Lindsey, defendant, the said sum of thirty-one hundred and forty-six $\frac{14}{100}$ dollars, ($3,146 25) the damages aforesaid in manner aforesaid by the jurors aforesaid assessed, together with their costs in this behalf expended.

Fieri facias issued on said judgment, 15th May, 1839, for the amount thereof, and all costs to fall term, 1839, which was returned by the marshal, "no property found;" alias issued 23d Oct., 1840, by order of and delivered to defendant, and returned "satisfied 18th March, 1844. J. G. LINDSEY."

Pluries ordered by defendant and issued 17th May, 1842, and which was returned by the marshal, levy made on lands and sold for $817.

ROGERS & GRAY
vs.
J. G. LINDSEY. } 1639.

11th April, 1839.

This day came the parties, by their attorneys; whereupon came the following jury, to wit, J. M. Tarleton and eleven others, twelve good and lawful men, who being elected, tried, and sworn, upon their oaths do say, that we, the jury, find for the plaintiffs, and assess their damages at thirty-five hundred and fifty-six $\frac{45}{100}$ dollars. It is therefore considered by the court, that the said Lewis Rogers and James Gray, plaintiffs, do recover against the said Joseph G. Lindsey, defendant, the said sum of thirty-five hundred and fifty-six $\frac{45}{100}$ dollars, ($3,556 45) for their damages aforesaid in manner aforesaid by the jurors aforesaid assessed, together with their costs in this behalf expended.

Fieri facias issued on said judgment 15th May, 1839, for the amount

thereof, and all costs to fall term, 1839, which was returned by the marshal, "no property found;" alias issued 23d October, 1840, by order of and delivered to defendant, and returned, "satisfied 18 March, 1840. J. G. LINDSEY."

Pluries ordered by defendant, and issued 17th May, 1842, which was returned by the marshal, "levy made on lands and sold for $817."

ROGERS & GRAY vs. J. G. LINDSEY. } 1640.

11th April, 1839.

This day came the parties, by their attorneys, whereupon came the following jury, to wit, J. M. Tarleton and eleven others, twelve good and lawful men, who being elected, tried, and sworn, upon their oath do say, that we, the jury, find for the plaintiffs, and assess their damages at forty-four hundred and eighty-seven $\frac{61}{100}$ dollars. It is therefore considered by the court, that the said Lewis Rogers and James Gray, plaintiffs, do recover against the said Joseph G. Lindsey, defendant, the said sum of forty-four hundred and eighty-seven $\frac{61}{100}$ dollars, ($4,487 61,) for their damages aforesaid in manner aforesaid by the jurors aforesaid assessed, together with their costs in this behalf expended.

Fieri facias was issued on said judgment 2d May, 1839, for the amount thereof, and all costs to fall term, 1839, which was returned by the marshal, "no property found;" alias issued 23d Oct., 1840, by order of and delivered to defendant, and returned, "satisfied 18th March, 1840. J. G. LINDSEY."

Pluries ordered by defendant, and issued 17th May, 1842, which was returned by the marshal, "levy made on lands and sold for $817."

ROGERS & GRAY vs. J. G. LINDSEY. } 1641.

11th April, 1839.

This day came the parties, by their attorneys; whereupon came the following jury, to wit, J. M. Tarleton and eleven others, twelve good and lawful men, who being elected, tried, and sworn, upon their oaths do say, we, the jury, find for the plaintiffs, and assess their damages at eighteen hundred and thirty-four $\frac{98}{100}$ dollars. Therefore it is considered by the court, that the said Lewis Rogers and James Gray, plaintiffs, do recover against the said Joseph G. Lindsey, defendant, the said sum of eighteen hundred and thirty-four $\frac{98}{100}$ dollars, ($1,834 98) the damages aforesaid in form aforesaid by the jurors aforesaid assessed, together with their costs in this behalf expended.

Fieri facias was issued on said judgment 2d May, 1839, for the amount thereof, and all costs to fall term, 1839, and returned by the marshal, "no property found;" alias issued 23d Oct., 1840, by order of, and delivered to defendant, which was returned, "satisfied 18th March, 1844. J. G. LINDSEY."

Pluries ordered by defendant and issued 17th May, 1842, which was returned by the marshal, "levy made on lands and sold for $817."

UNITED STATES OF AMERICA,
Southern district of Alabama.

In bankruptcy.

Proceedings had before the honorable the district court of the United States, for the southern district of Alabama, at a special term begun and held in and for said southern district, at Mobile, on the second day of May, in the year of our Lord one thousand eight hundred and forty-three, by order of and before his honor, William Crawford, judge of said court.

Be it remembered, that heretofore, to wit, on the twenty-fourth day of December, in the year of our Lord one thousand eight hundred and forty-two, Joseph G. Lindsey filed in said court his petition, praying the benefit of an act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841; which, together with the schedules thereunto annexed, is in the words and figures following, to wit:

To the honorable William Crawford, judge of the district court of the United States, for the southern district of Alabama.

The petition of Joseph G. Lindsey respectfully sheweth, that your petitioner is a resident of the county of Monroe and State of Alabama, and that your petitioner has become unable to meet his debts and engagements.

And your petitioner further sheweth, that he is indebted to the persons and in the sums mentioned and set forth in the schedule of debts hereunto annexed, and marked "(1) Schedule setting forth a list of petitioner's creditors, and the amount due to each," and signed by your petitioner; which schedule, according to the best of your petitioner's knowledge and belief, contains a true list of your petitioner's creditors, their residence, and the amounts due to each; which schedule, signed as aforesaid, your petitioner prays may be taken as a part of this petition; which debts, your petitioner sheweth, have not, in whole or in part, been created in consequence of any defalcation by your petitioner as a public officer, or as executor, administrator, guardian, or trustee, or while acting in any fiduciary capacity.

And your orator further shews, that the schedule hereunto annexed, and marked "2, Schedule of property," and signed by your petitioner, contains a correct inventory of your petitioner's property, rights and credits, of every name, and kind, and description, and the location and

situation of each and every parcel and portion thereof, to the best of your petitioner's knowledge and belief; which your petitioner also prays may be taken as a part of this his petition.

Your petitioner, therefore, respectfully prays, that, by decree of this honorable court, he may be declared a bankrupt, according to the provisions of the act of Congress in such case made and provided; and that such further orders and proceedings may be taken as are provided in and by said act of Congress, dated the 24th of December, A. D. 1842.

JOSEPH G. LINDSEY, *Petitioner.*
CAMPBELL & CHANDLER,
Attorneys for petitioner.

UNITED STATES OF AMERICA,
Southern district of Alabama, ss:

On the 23d day of December, A. D. 1842, personally appeared the petitioner above named; and, being duly sworn, made solemn oath that the foregoing petition by him signed, and the schedules annexed, are true.

ADDISON FOX, *Commissioner.*

Schedule setting forth a list of petitioner's creditors, their residence, and the amount due to each.

Names of creditors.	Residence.	Nature of claim.		Amounts.
C. S. Fowler & Co	New Orleans, La	Judgm't U. S. circuit court, so. dist., La., 25th March, 1840, on endorsement for John W. Lindsey		$4,790 40
A. M. Nathan	do do	Judgment 26th March, 1840, U. S. circuit ct., so. dist., Alab.		14,434 95
		On this suit I paid before judgment, to Moses Harris, as per his receipt	$2,500 00	
Bank of Augusta	Augusta, Georgia	Judgment 25th December, 1840, U. S. circuit court, so. dist., Alab., for Goodman, Miller & Co		1,620 00
Parish & Co	New York	Judgment, same court, 23d Dec., 1840; my blank draft filled up to Duke Goodman		4,997 00
Casimer Patrick	Charleston, S. C.	Judgment, same court, 10th May, 1841; endorser for Goodman, Miller & Co		697 00
Charles Edmondston	do do	Judgment, same court, 10th March, 1841; endorser for Goodman, Miller & Co		1,905 00
William J. Rees	Not known, S. Carolina	Judgment, same court, 30th Nov., 1841; blank filled by Duke Goodman		1,913 00
Cronchs & Snead	Richmond, Virginia	Judgment, same court, 26th November, 1841; my own debt		6,697 00
Commercial Bank of N. Orleans	New Orleans, La	Suit now pending in U. S. circuit court, so. district, Alab., on my aft. for Goodman, Miller & Co., drawn on John W. Lindsey, dated 22d February, 1837, payable sixty days after date, for		6,000 00
Planters and Merchants' Bank	Mobile, Alabama	Judgment, circuit court, Mobile county, 1841		11,364 32
		Costs		15 37
Do do do	do do	Judgment, circuit court, Mobile county, 1841		6,899 73
		Endorsement for Goodman, Miller & Co., costs		15 25
Do do do	do do	Judgment, circuit court, Mobile county, 1841		1,966 93
		Costs		21 00
Branch State Bank	do do	Judgment, circuit court, Mobile county, 1841		4,335 33
		Costs		15 81
Do do	do do	Judgment, circuit court, Mobile county, 1841		6,719 50
		Costs		15 81
Do do	do do	Judgment, circuit court, Mobile county, 1841		3,242 54
		Costs		15 81

Rogers vs. Lindsey et als.

2263

Schedule of creditors of J. G. Lindsey—Continued.

Names of creditors.	Residence.	Nature of claim.		Amount.
Branch State Bank	Mobile, Alabama	Judgment, circuit court, Mobile county, 1841		$3,035 17
		Costs		15 69
Merchants' Insurance Company	do do	Judgment, county court, Mobile county, Feb. 14, 1838	$2,217 38	
		10 per cent. damages	221 73	
		The above judgment is settled all but costs		75 14
Robinson & Caldwell	Charleston, S. C.	Judgment, county court, Mobile county, Nov. 14, 1842		2,228 76
		Costs		11 31
Archibald Brown	Mobile	Judgment, circuit ct., Monroe county, Alab., 1st Oct., 1839	3,338 58	
		Settled all but costs		15 50
City Council of Montgomery	Montgomery	Judgment, circuit court, Monroe county, 8th Oct., 1840		1,523 32
		Costs		12 50
John B. Toulmin	Mobile	Judgment, circuit court, Monroe county, 7th Oct., 1840		1,235 31
		On endorsement for L. R. Moore, costs		10 00
		Costs		9 00
Francis Bugbee	Montgomery	Judgment, same court, 12th Oct., 1841		1,991 90
		On endorsement for Enoch Parsons, costs		7 75
C. S. Fowler & Co	New Orleans, La.	Judgment, same court, 11th Oct., 1841	6,669 46	
		Settled all but costs, (cost)		9 94
James R. Moore, to use of Smith & Allen.	Claiborne, Alabama	Judgment, same court, 11th Oct., 1841		73 85
		Costs		10 19
William P. Molett	Portland, Dallas co.	Judgment, same court, 11th Oct., 1841		3,424 66
		Costs		9 00
The following are pending on trial docket, for fall term, 1842, of the circuit court of Monroe county, Alab., against me, to wit:				
J. B. Toulmin	Mobile	Action on my endorsement of L. R. Moore's note, due 1st May, 1840, for		1,186 66
Dawson & Ferguson	do	On my note, dated 28th February, 1839, and due at 90 days date, for		2,068 80
Charles Barton	Claiborne	On my note due 1st February, 1838, for		800 00

Jacob Hollingsworth, use of Erastus H. Crosby	Monroeville, Alab.	On my note, due February, 1842, for		1,204 42
Do do do	do do	On my note, due 1st January, 1841, for		1,204 42
Edward L. Smith	Claiborne, Alab.	On my " " " 1842		3,140 00
W. & J. Kelly	New York	Judgment, spring term, 1842		731 00
		Costs		13 00
William Magee	Mobile	Judgment, county court, Monroe co., 8th July, 1839		890 83
		Endorsement for Barnes & Watts, costs		35 75
		Cr. by sheriff's receipt, 14th March, 1840	424 32	
Frederick Scruggs	do	Judgment, county court, Monroe co., 12th July, 1841		1,353 00
Jones & Bull	do	Judgment, county court, Monroe co., 12th July, 1841, (Goodman, Miller & Co.)		1,949 93
		Court costs		11 31
Jones & Bull	do	Judgment, as above, 12th July, 1841, Goodman, Miller & Co.		1,822 30
		Costs		10 50
Bank of Mobile	Mobile	My draft on William Todd, Richmond, Va., favor of Henry Center, for Todd's benefit		1,500 00
L. J. Wilson	Mobile	My note to him		1,000 00
Jacob Hollingsworth	Shrevesport, La	My note to him, due 1st January, 1840		3,000 00
		My draft on William Todd, payable at Richmond, Va., in my own favor		1,000 00
Davenport & Seawell	Mobile	My draft on William Todd, payable at Richmond, Va		1,533 33
Bogart & Kneeland	New York	My endorsement of Goodman, Miller & Co.'s note, 7th March, 1839, at 60 days		1,750 00
Do do	do	Same as above, dated 1st December, 1838 or '9, for		2,599 15
John Martin	Macon, Ga	My note, dated 5th March, 1839, payable 6th March, 1842		1,536 72
Do	do	do do do do do 1st March, 1843		1,536 72
		The two last notes above were given for a debt of Goodman, Miller & Co., by letter from Duke Goodman.		
L. J. Moore	Claiborne			4,000 00
Hickman Fowler	Burnt Corn, Monroe co.			600 00
P. T. Harris	Mobile	On account		800 00
Roper & Moody	do	Account		60 00
William Moore	Claiborne	Note, balance due about		1,100 00
Stephen R. Anders	Turnbull, Monroe co.	Amount not known.		
James Tomlinson	Conecuh county, Alab.	do do		
N. G. Haden	Macon county, Ga.	One note due when given, for		1,200 00
Do	do do	One note, dated March, 1841, due, I think, in 12 months		2,600 00
Thomas Montgomery	Montgomery, Alab.	My note, dated 26th Feb., 1839, due 24 months after date		3,897 50

Schedule of creditors of J. G. Lindsey—Continued.

Names of creditors.	Residence.	Nature of claim.		Amount.
Richard S. Moore	Montg'ry Hill, Baldwin county, Alab.	My note, due not recollected, for		1,000 00
John Henly	Montgomery, Alab.	My draft, dated July, 1841		165 00
Enoch Parsons	Wetumpka, (dead).	My draft, in his favor, accepted by William Todd, payable at Richmond, Va.		1,100 00
Asa Hammond	Claiborne, Alab.	Two judgments in justice's court, Monroe county.		
Richard Stephens	do do	One do do do do do		20 00
James H. Draughan	do do	My note, date not recollected, for		1,000 00
Do do	do do	One note, for		450 00
Garret Longmire, jr.	Monroe county	My note, date not recollected, but not over		300 00
Edward L. Smith	Claiborne, Alab.	My note, dated June, 1841, due 1st January next		3,380 00
Smith & Allen	do do	Amount not known.		
Henry Sampson	Mobile	Three small notes and an account		281 49
Lewis Slaughter	Claiborne, Alab.	Balance on note about		100 00
L. G. Portis	do do	Account		1,500 00
John Ticknor	Mobile	Amount not known.		
William Robinson	Claiborne, Alab.	Balance on note, with interest		5,000 00
Ross, Strang & Co.	Mobile	My note, date not recollected		92 00
C. D. Hunter	Portland, Dallas, co., Ala.			3,900 00
		On this last I gave him a note on Bissell & Carville, as security, amounting to about $4,000, but they dispute about $1,900 of said note.		
—— Tift		My due bill		65 00
Thomas Anderson	Montgomery Hill, Alab.	Security on Duke Goodman's note, on which Mr. Adkinson says there is a balance due, of		400 00
Esquire Reed	Claiborne, Alab.	Balance on note and account, amount not known.		
Steamboat Jefferson	Unknown	Due bill, date not recollected		35 00
Bank of Hamburg	Hamburg, S. C.	Oliver Simpson & Caleb H. Lindsey were my securities to the Bank of Hamburg, S. C., for which I left negroes with Simpson for sale to pay the same.		
Crane & Keith	Mobile	On account.		
Stephen Steele	Claiborne, Alab.	Account of		500 00

James W. Rhew	Turnbull, Monroe co., Ala.	My note		350 00
Charles White	Mobile	My note, date not recollected, for		300 00
H. S. Atwood	Prairie Bluff, Alab.	My note, due 1st January, 1842		2,000 00
C. H. Lindsey	Hamburg, S. C.	On note of John W. Lindsey, about		1,300 00
Office of Advertiser & Chronicle	Mobile	Account		20 00
Office of Commercial Register, &c	do	Amount not known.		
Charles Barney & Co	do	Account, amount not known.		
Joseph D. Barry	Dead	Two or three small notes, with interest, about		350 00
Flavel Foster	Shrevesport, La	My draft on Duke Goodman, favor of Foster, date not recollected, amount		400 00
Daniel Bratt	Washington, Autauga co.	My note, due 1st January, 1841		140 00
William Knox	Mobile	My note or receipt, date not recollected, for		150 00
E. & F. Robinson	do	Judgment on note of mine, date not recollected, for		171 37
Martha J. Colburn	Claiborne	Suit in chancery, to recover two negroes purchased at coroner's sale.		
Busey & Foster	do	Note past due, about		200 00
James C. Oliver	Pike county	Note past due, with interest from January, 1842		120 00
E. C. Center	Mobile	My note, payable to Stephen R. Anders, dated 15th January, 1841, due at 1 year 7 months		9,425 00
E. C. Center & Co	do	My draft on Morris & Boykin		3,957 40
Henry Center	do	do do do do		5,914 81
Lewis Rogers	Richmond, Va	Balance of account		15,817 13

(Signed) JOSEPH G. LINDSEY.

Rogers vs. Lindsey et als.

Inventory of property and assets of petitioner.

One negro woman, Ritta, 30 years old; one bureau; one riding horse, saddle, and bridle; one dozen silver table spoons; one dozen tea spoons.

In the summer of 1840, I settled my accounts with Goodman, Miller & Co., and Duke Goodman, in presence of Joseph H. Young, when it was ascertained, on my transferring back William H. Arthur's note for fifteen hundred dollars, and upwards, and P. P. Bowen's note for about $3,200, that they, the said Goodman, Miller & Co., and Duke Goodman, owed me, jointly, upwards of four thousand dollars, and I left the account with Duke Goodman; which accounts I have not been able to get in my possession since.

(Signed) JOSEPH G. LINDSEY.

Filed December 24, 1842.

D. FILES, *Clerk.*

And afterwards, to wit, on the thirtieth day of January, in the year of our Lord one thousand eight hundred and forty-three, being a special term of said district court, begun and held at Mobile, in and for said district, the following decree of bankruptcy was passed in said case, to wit:

Joseph G. Lindsey, of the county of Monroe, in the State of Alabama, having, on the 24th day of December, A. D. 1842, filed his petition, to be declared a bankrupt, (duly verified,) and satisfactory proof being made of the publication of notice to all persons interested to appear in court this day *in court*, and shew cause against said petition; and the court being now moved to grant the prayer of said petition, and no cause being shown to the contrary, and the petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is thereupon ordered and decreed by the court, that the said Joseph G. Lindsey be, and he is hereby, declared and decreed a bankrupt pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

Afterwards, to wit, at a special term of said court, begun and held in and for said district, at Mobile, on the second day of May, in the year of our Lord one thousand eight hundred and forty-three, the following proceedings were had in said case, to wit:

Joseph G. Lindsey, a bankrupt, having filed his petition, praying to be discharged in full from all his debts, and for a certificate of such discharge, pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841; and it appearing to the satisfaction of the court that the said bankrupt has bona fide surrendered all his property and rights of property, (with the exception of such articles as were designated and set apart by the assignee of his household and kitchen furniture;) and that the said bankrupt has fully complied with and obeyed all the orders and directions which have, from time to time, been passed by this court, and has otherwise conformed to all the requisitions of said

act, and that no written dissent to such discharge has been filed by a majority in number and value of his creditors who have proved their debts, and no cause being now shown to the court why the prayer of the petitioner be not granted, it is thereupon ordered, decreed, and allowed by the court, that the said Joseph G. Lindsey be, and he accordingly is, hereby fully discharged of and from all his debts owing by him at the time of the presentation of his petition to be declared bankrupt, to wit, on the 24th day of December, 1842. And it is further ordered, that the clerk of this court duly certify this decree under the seal of this court, and deliver the same to the said bankrupt when demanded.

Whereupon, afterwards, to wit, on the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and forty-six, the following writs of subpœna issued out of the office of the clerk of said circuit court upon the filing the bill aforesaid, to wit:

Subpœnas in chancery.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judical circuit and southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to summon Joseph G. Lindsey, who is a citizen of the State of Alabama, to be and appear before the hon. the circuit court aforesaid, at the place of holding said court, at rules, to be held in the clerk's office of the court aforesaid, on the first Monday of May next, to answer the bill of complaint of Lewis Rogers, filed in said court on the 6th day of March, A. D. 1846, praying an injunction, &c. Herein fail not, and have you then and there this writ.

Witness the hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this first Monday of March, in the year of our Lord, one thousand eight hundred and forty-six.

Issued this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and forty-six.

Attest:

JOHN FITTS,
Clerk C. C., southern dist. of Ala.

The defendant is required to enter his appearance on or before the first Monday of May next, otherwise the bill will be taken as confessed.

JOHN FITTS, *Clerk.*

Marshal's return, received 28th March, 1846, and executed April 10, 1846.

JAMES G. LYON,
U. S. marshal.
By A. EVERETT, *D. M.*

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama; the President of the United States, to the marshal of said district, greeting:

You are hereby commanded to summon Henry S. Atwood, who is a citizen of the State of Alabama, that he be and appear before the hon. the circuit court aforesaid, at the place of holding said court, at rules to be held in the clerk's office of the court aforesaid, on the first Monday of May next, to answer the bill of complaint of Lewis Rogers, filed in said court on the 26th day of March, A. D. 1846, praying an injunction, &c. Herein fail not, and have you then and there this writ.

Witness the hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this first Monday of March, in the year of our Lord one thousand eight hundred and forty-six.

Issued this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and forty-six.

Attest: JOHN FITTS,
Clerk C. C., southern dist. of Ala.

The defendant is required to enter his appearance on or before the first Monday of May next, otherwise the bill will be taken as confessed.

JOHN FITTS, *Cl'k.*

Marshal's return. Received 28th March, 1846. The defendant, H. S. Atwood, not found.

J. G. LYON,
U. S. marshal.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama; the President of the United States, to the marshal of said district, greeting:

You are hereby commanded to summon John S. Bennett, who is a citizen of the State of Alabama, to be and appear before the hon. the circuit court aforesaid, at the place of holding said court at Mobile, at rules to be held at the clerk's office of the court aforesaid, on the first Monday of May next, to answer the bill of complaint filed in said court on the twenty-sixth day of March, A. D. 1846, praying an injunction, &c. Herein fail not, and have you then and there this writ.

Witness the hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this first Monday of March, in the year of our Lord one thousand eight hundred and forty-six.

Issued this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and forty-six.

Attest: JOHN FITTS,
Clerk C. C., southern dist. of Ala.

The defendant is required to enter his appearance on or before the first Monday next, otherwise the bill will be taken as confessed.

JOHN FITTS, *Cl'k.*

Marshal's return. Received 25th March, 1846; the said John S. Bennett not found in my district.

J. G. LYON,
U. S. marshal.

And afterwards, to wit, on third day of September, in the year of our Lord one thousand eight hundred and forty-six, the said defendant, Joseph G. Lindsay, filed in said court his separate answer to the said bill of complaint, in the words and figures following, to wit:

Answer of Lindsey.

The separate answer of Joseph G. Lindsey, one of the defendants to the bill of complaint of Lewis Rogers, against this defendant and others, in the circuit court of the United States, for the southern district of Alabama.

This defendant, saving and reserving to himself all benefit of exception to said bill, for answer thereto, or to so much and such parts thereof as he is advised is material for him to answer, saith, that he admits it to be true, as stated in said bill, that the said Lewis, in the year 1836, and before that time, was one of the firm of Rogers and Gray, composed of the persons named in said bill, and transacting the business as therein charged.

And he further answering saith, that about the time stated in said bill the said Rogers and Gray did purchase certain bills of one John W. Lindsey, upon said Goodman, Miller & Co., of which, in the year 1837, about twenty-one thousand two hundred dollars remained unpaid, and not twenty thousand as charged in said bill. And he saith, that he, this defendant, never derived any benefit by reason of drawing the said; but the same were drawn in the manner and for the purposes, following, to wit, said Goodman, Miller & Co., being commission merchants in Alabama, and pressed for money, drew their bills on John W. Lindsey, who then resided in Richmond, Virginia, and was also then a partner of this defendant in a particular trade, to act in buying and selling slaves. The said John W. Lindsey did, and would, accept the bills so drawn, although he had no funds of said Goodman, Miller & Co., in his hands; and to meet them as they fell due, drew his bills on Richmond, on said Goodman, Miller & Co., which bills the said Rogers and Gray purchased with a full knowledge of the whole transaction, and well knowing said bills were drawn for the benefit of said Goodman, Miller & Co., as this defendant believes and charges. This course of business continued until 1837, when Goodman, Miller & Co., failed and stopped payment, at which time said Rogers & Gray held bills drawn as aforesaid, and accepted by Goodman, Miller & Co., to the amount of about $21,200, (twenty one thousand two hundred dollars) and he avers that said Goodman, Miller & Co., were the prin-

cipal debtors on said bills, and to said Rogers & Gray, and this defendant only security, as was known and admitted by said R. & Gray.

He further answering saith, that in 1837 said Gray, one of the said firm, came to Alabama to settle and adjust the claims of Rogers & Gray against said Goodman, Miller & Co., and this defendant; and a settlement was then and there effected, on the following terms, to wit, the said Gray agreed to receive certain notes then in the possession, and the bona fide property of the said Goodman, Miller & Co., and which amounted to the sum then due said Rogers & Gray, by said G., Miller & Co., said notes to be endorsed by G. M. & Co., and this defendant; but the said Gray expressly promised and agreed with this defendant, that if he would endorse the said notes which he was to receive of said Goodman, Miller & Co., the said Rogers and Gray would not sue him, this defendant, until all the other parties to said notes were sued to insolvency; which said agreement was reduced to writing, and signed by said Gray for Rogers & Gray. And he avers that said writing has been lost, but that the contents can be proved. And he avers that in the said settlement, and in taking said notes, all the parties considered said Goodman, Miller & Co., as the principals, and this defendant as security. And he saith, that besides the notes set forth in said bill of complaint as transferred to R. & Gray, there were other notes transferred, to wit, one on him, this defendant, with Chas. A. English as security, which was paid to said Rogers & Gray without suit, and was for the sum of thirty-five hundred dollars; one on Simpson for $1400 (fourteen hundred dollars,) which was also paid to said Rogers and Gray; and another on Adam Carson upon said R. & Gray; collected about $2700, (twenty-seven hundred dollars,) making, in addition to the notes set forth in said bill, $7,600, which was actually received by said R. & G. on said transaction.

And he further answering saith, that he believes it is true that none of said notes were due at the date of their transfer, and he admits that when they did become due said R. & Gray sued not only the makers and first endorsers, but also this defendant, the last endorser, contrary to their express agreement with him, and recovered judgments as charged in said bill.

And this defendant further answering saith, that it is true that some time in May or June, 1840, he, this defendant, did, in the city of Richmond, make a proposition to said Lewis Rogers to settle his liabilities as endorser on the said notes transferred as aforesaid; that it was by a calculation estimated that the principal and interest amounted to about $20,000; and this def't believing that, by his personal attention, something could be made out of the principal in said notes transferred, which would or could not be if left to the complainant who was out of the State of Alabama, or to his attorneys who resided in Mobile; and knowing that if all was lost he, this defendant, would still be liable as endorser, he, this defendant, did propose that the said Rogers should cash a certain note which he, this defendant, then held on said Hudgins, who resided in Virginia, and that he, this defendant, would

give his note for the sum of $20,000, with said Stephen R. Anders, Adam Carson, John Davis, and Jas. Tomlinson, as securities, and take a transfer of all the said judgments to him, said defendant, to which proposition the said Rogers assented; but he positively denies that he made any misrepresentations, used any deceit, or was guilty of any fraud. He admits that he described some of said defendants to said judgments as insolvent and some doubtful, as the fact was, and still is. He admits that he represented the securities to said note as good, as they were, in fact; but he avers that said Rogers did not receive said note on his, this defendant's, representations; but made inquiry of others, and satisfied himself of the sufficiency of the note from other sources than defendant.

And he further saith, that the said Gray did agree to take said note of $20,000, in full satisfaction of all said judgments against this defendant; and did also agree, in consideration of this defendant's giving said note, to transfer, assign, set over, and give to this defendant full control and the entire interest in said judgments, including the judgment against said Bissell & Carville and John S. Bennett, and did give to this defendant an instrument in writing, so conveying the interest of Rogers and Gray to said judgments to this defendant, and authorizing him to control the same; which instrument in writing this defendant avers has been lost, but its contents can be found. And he denies that said agreement, or the written transfer and authority, was or were intended to [be] limited or restricted by any condition whatever; but avers that said Rogers received said note for $20,000 in absolute unconditional payment, discharge, and satisfaction of said judgments against this defendant, and for an absolute unconditional transfer of all the other judgments on said transferred notes to him, this defendant. And he denies that he was, by said agreement, in any way bound to account to said Rogers for any part of said judgments, in the event said note for $20,000 was not paid, or upon any other event or contingency. And he denies that he was to have the control merely of said judgments; but avers that he was to have the entire and absolute interest in them as assignee of said R. and Gray. And he again denies using any deceit or fraud, or making any misrepresentations in regard to said transaction, or in regard to the securities on said note; and he avers that he then esteemed them perfectly good and responsible, and that they were then so held and esteemed by all who knew them. He denies that he then knew they, or any one of them, was insolvent and unable to respond to said note. And he denies that he had any object in procuring said note, and in his agreement, other than a fair and honest means of settling his liability as endorser of said notes, and realizing from the defendants who were sued something to reimburse himself by reason of his said endorsements. And he says that, after the giving of said note, he made a payment of about $4,000, say four thousand dollars, on or about the thirteenth of December, 1840, as will appear by the letter of said Rogers acknowledging the receipt thereof,

dated 13th December, 1840. He also paid Stewart and Easton, attorneys of said Rogers and Gray, for their fees and commissions, five hundred dollars; and the clerk of said court caused executions to be issued on the judgment against this defendant, in favor of said Rogers and Gray, for the costs; and this defendant believes all the costs in all the cases where said R. and Gray were plaintiffs, and the same were levied upon certain lands of the defendant, which were sold for $800; all of which went to the satisfaction of said costs; and he hath further, in the attempt to collect said judgment against said John S. Bennett, paid about $, and is still liable to pay other large sums, besides the loss of his own time, expenses, and trouble, for and on account of divers suits and other proceedings with the said Bennett and others, growing out of said judgment, and his efforts to collect the same. He discovers and discloses, that he has received on the said judgments, so transferred to him by said Rogers, *saith*, that on the judgment against Sylvester he received the sum of $2,200; that about or soon after the time of the rendition of said judgments, Samuel W. Oliver died, and the administrator having no funds in hand, this defendant agreed to receive one thousand dollars in full satisfaction of that judgment; and the above two sums, in the aggregate $3,200, is all that he has ever collected, or that has come to his hands, on account of said judgments. The judgment against E. A. English was against him as endorser for this defendant; and, after the said assignment by Rogers to him, this defendant, he entered satisfaction thereof, and this proved to be wholly insolvent, as did also S. S. Bowen and the maker of said note; all of whom are named in said bill. He also considers the judgment against him, this defendant, satisfied, and has so caused it to be entered. The judgments against Goodman, M. & Company, are of no value; Goodman has died insolvent, and all the parties thereto are insolvent; the judgment against said John S. Bennett has not yet been collected; execution was issued, and was levied on certain lands which were sold, and the said H. S. Atwood became the purchaser; subsequently, certain slaves were levied upon, and the sale enjoined by injunction from the chancery court of the State of Alabama, which said injunction was afterwards dissolved, and the cause taken to the supreme court by said Bennett, and the order dissolving the injunction affirmed; so that the said John S. Bennett has, as this defendant avers, used all means in law, equity, and otherwise, to avoid the payment of the said judgment.

And he, this defendant, here avers, that according to the best of his information, the said Lewis Rogers has in fact little, if anything, to do with the filing of said bill, but that the said John S. Bennett is the true actor therein; that the whole proceedings are for the benefit of the said John S. Bennett; and that he or his attorneys are using the name of said Rogers for the sole benefit and advantage of said Bennett; that the said Bennett, having failed in all his attempts to avoid the payment of said judgment, has, as a last resort, applied to said Rogers, as this defendant believes and charges, for leave to use his name; and that

there is some concert or arrangement by and between said Bennett and Rogers in relation to said judgment, and designed to defame and injure this defendant. And this defendant further saith, that no suit or action hath ever been instituted against any of the parties to said note for $20,000, although the said Rogers has often threatened to put the same in suit, but that the said note is still in the possession of said Rogers, so far as known to this defendant; and for further answer this defendant saith, that it is not true as charged in said bill that he, this defendant, in making his schedule in bankruptcy, did not include or name the said judgment against said Bennett, for he saith it is included and named in said schedule as the Bissell and Carville debt, and in said schedule stated to be held by one Charles D. Hunter, as collateral security for a debt due by defendant to said Hunter. It is true the debt is not designated as the Bennett debt, but it is described as the Bissell and Carville note, which this defendant intended as descriptive of all the incidents to said note; and he denies that, in making his schedule and application for bankruptcy, he intended or was guilty of any fraud as charged in said bill. He charges the truth to be, respecting said judgment, and the several transfers thereof, this defendant saith, that he was indebted to said Charles D. Hunter in the sum of about $3200; having no better security, he, this defendant, transferred to said Hunter a security for the payment of said debt of $3200, the said judgment against Bennett, and in fact the entire claim on Bissell and Carville as well as said Bennett, by the name of the Bissell and Carville debt, by which name it was in all the proceedings known.

That afterwards, and before obtaining his discharge in bankruptcy, he, this defendant, settled with the said Hunter, and took a re-assignment and transfer from the said Hunter, to wit, about February or March, 1844; and about the same time, being indebted to the said Henry S. Atwood in about the sum of $2400, and the said Atwood having sued for the same, this defendant agreed with said Atwood to delay proceedings on his said suit, and as security to said Atwood he, this defendant, in April, 1844, gave said an obligation to the effect that he, the said Atwood, should have so much and such an interest in the said judgment against said Bennett as would pay the debt due by said defendant to said Atwood, to which interest and for which purpose only the said Atwood has an interest in said judgment against said Bennett; and he saith that said transfer to said Atwood was fairly and honestly made for the purpose aforesaid, and for no other purpose; and he avers that he had a perfect right to make the same, and he saith that the said Atwood, because of his interest, purchased at said sale the said land. And he further answering saith, that the said Rogers was fully apprized of the circumstances and situation of the said Hudgings, and that the said Hudgings has fully paid and satisfied his note transferred by this defendant to said Gray; and he further saith, that if the parties to the said $20,000 note were under protest at the time he gave the said note to said Gray he did not know it, and if they were, they were nevertheless good and responsible at the time; and he saith that

for a long time afterwards they remained so; and he saith that the amount of said note could have been made out of said parties by suit after the maturity of said note; that said Tomlinson especially had, for many years thereafter, a large estate, sufficient to respond to said note, and he denies that executions were at that time returned "no property" against all or any of said parties, so far as this defendant knows or believes. And he denies that he was the agent of said Rogers in regard to said judgments, but avers that he was the true and lawful assignee and owner thereof. He admits that the land of Bennett sold for a small price, and less than its value; but charges that this was owing to the acts of Bennett, and Bissell, and Carville, who pretended there were difficulties about the title, and that, in fact, the land did not belong to Bennett; and he saith that said Bennett hath filed a bill in chancery against said Atwood to redeem said land; he saith, that the marshal did make a deed to said Atwood for said land. He does not know what application was made by the marshal of the purchase money. And he further saith, that, before the marshal would make the levy of the execution upon the property of said Bennett, he required a bond of indemnity of this defendant, and this defendant actually gave said marshal [a] bond in the sum of seven thousand dollars, to indemnify him for making said levy; and he demurs to said bill for want of proper parties, for being multifarious, and for want of equity; and, having fully answered, he prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully expended.

COOPER & LESLIE,
For defendant.

UNITED STATES OF AMERICA,
Southern district of Alabama.

Personally appeared before me, John Fitts, clerk of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, Joseph G. Lindsey, who, being duly sworn, says that the facts stated in the foregoing answer are true, so far as they come within his own knowledge; and those not of his own knowledge he believes to be true.

JOSEPH G. LINDSEY.

Subscribed and sworn to before me, this 3d day of September, A. D. 1846.

JOHN FITTS, *Clerk.*

Filed 3d September, 1846.

JOHN FITTS, *Clerk.*

Answer of defendant Bennett.

And afterwards, to wit, on the ninth day of September, in the year of our Lord one thousand eight hundred and forty-six, the said defendant, John S. Bennett, filed in said court his separate answer to said bill of complaint, in the words and figures following, to wit: The separate answer of John S. Bennett, one of the defendants of the bill of complaint of Lewis Rogers, of the city and State of New York,

filed in the circuit court of the United States, for the southern district of Alabama, against the said John S. Bennett and others.

This defendant, saving and reserving to himself all benefit of exception to the many errors and imperfections in said complainant's bill contained, for answer thereto, and to so much and such parts thereof as he is advised is material for him to answer unto, he answering saith: He doth not know, and cannot set forth as to his belief or otherwise, whether the said complainant, Lewis Rogers, was a member of the firm of Rogers and Gray, or whether said complainant, Lewis Rogers, and one James Gray composed said firm of Rogers and Gray; or what was the business carried on by said firm of Rogers and Gray; or what was the extent of that business; or whether said house was located at Richmond, Virginia; or whether they made, at any time, a purchase or purchases of bills of exchange from Joseph G. Lindsey, drawn on Goodman, Miller & Co., of Mobile, or of the amount of said bills; and defendant is ignorant of the settlement which complainant charges he made with Joseph G. Lindsey; or of the notes, or amounts thereof, transferred by complainant to Joseph G. Lindsey, excepting the note of Bissell and Carville; and this defendant admits that Tjtus L. Bissell and George W. Carville were merchants, in the year 1837, at Carlowville, Dallas county, under the firm of Bissell and Carville; that said Bissell and Carville drew a note, dated the 2d of April, 1837, in favor of defendant, for $3,297 27, negotiable and payable at the Bank of Mobile; which note was endorsed by the defendant for the accommodation of the drawers, Bissell and Carville, and Duke Goodman, one of the firm of Goodman, Miller & Co. Defendant has heard and believes that the said note was not paid at its maturity, but the same, he has heard, was protested for non-payment; but whether the regular notice of protest was ever given, and lodged in the post office, and addressed to Bissell and Carville, or to this defendant, or were ever given in any other legal manner, this defendant neither admits nor denies; but this defendant denies that he ever received notice of said protest himself, to the best of his knowledge and belief; and he has heard and believes that the house of Bissell and Carville never received notice of the dishonor of said draft; and this defendant knows nothing of the protest of the other bills and notes, placed in complainants' hands by said Joseph G. Lindsey, as complainant charges.

This defendant admits that he has heard, and has ascertained from the records of the circuit court of the United States, that judgments were obtained against this defendant and the other parties to said note of Bissell and Carville, as complainant charges; and he denies that he was ever made a party to said suit, as no process was ever served on this defendant, to the best of his knowledge, information, and belief; and this defendant avers that he never knew of the commencement of the suit until he heard of the existence of said judgment, and his inability to procure the requisite security has alone, heretofore, prevented him from taking measures to rescind said judgment against himself.

And further answering this defendant saith, he is ignorant of the dis-

solution of the firm of Rogers and Gray, or of the terms or stipulations thereof, excepting what complainant states in reference thereto; and he is ignorant of the statements which complainant makes of the settlement between the said Joseph G. Lindsey and himself, as to the transfer of the notes, and particularly Bissell and Carville's note to Joseph G. Lindsey, and the stipulations and terms of said transfer, or as the bill charges, of Lindsey giving his note for $20,000, or of complainants accepting two drafts for $5,000 each, drawn by said Joseph G. Lindsey, or of all or any of the matters relating thereto, as charged by the complainant; but this defendant does admit that he has heard said Joseph G. Lindsey did claim to be the owner of said judgments of Rogers and Gray against John S. Bennett, and Rogers and Gray against Goodman, Miller & Co.

And the defendant further saith, that the said Joseph G. Lindsey did, on [the] 27th of November, 1840, write a letter to this defendant, in which he demanded payment of said judgment, and gave defendant a statement of said judgment, alleging that he was the owner thereof, having paid up to the owners thereof, Rogers and Gray, the full amount of the principal, and all costs.

And defendant further answering saith, that said Joseph G. Lindsey sent up said letter on the 27th November, 1840, by his brother, to have a settlement with this defendant, and Bissell and Carville, at Carlowville; that Bissell and Carville had failed 11th March, 1841, and their assignee supposing that said Joseph G. Lindsey to be the owner of said judgment by paying the same as he represented, did propose to him a settlement of said judgment if Lindsey would consent to credit on said note of Bissell and Carville certain moneys remitted by Bissell and Carville to Goodman, Miller & Co, to be applied to said note, and which they did not apply; which proposition this defendant has heard said Joseph G. Lindsley did refuse.

And this defendant further answering saith, that said Joseph G. Lindsey did, in the year 1842, make a levy on the lands mentioned by said complainant, but did not sell the same as complainant states; he, this defendant, having forbid said sale, no person would bid for said lands; that again, in 1844 he made a second levy under the judgment of Rogers and Gray vs. defendant, and said Lindsey did make sale of them at Cahawba, as the bill states. And further saith, that the said Henry S. Atwood was the purchaser of said lands for the prices in complainant's bill mentioned, which said purchase this defendant admits was at a grossly inadequate price.

This defendant further says, that he has heard and believes that Henry S. Atwood claims to be the owner of the whole or part of said judgment of Rogers and Gray vs. this defendant, and acted with said Jos. G. Lindsley in all the proceedings under the same connected with the sale of said lands.

And this defendant further answering saith, that he has heard and believes that said Joseph G. Lindsey did apply for the benefit of the act of bankruptcy, and that he did not include the said note of Bis-

sell and Carville in his schedule of assets; and that he was discharged as a bankrupt on the seventh of February, 1844.

And further answering saith, that if said note of Bissell and Carville or the judgment thereon, was included in his schedule of assets, it was never transmitted to the assignee in bankruptcy; or, if he had parted with the same for a valuable consideration, as he sometimes pretends he had done, then the consideration was not stated or paid over to the said assignee in bankruptcy; but this defendant believes, and so charges the fact to have been, that if the said Joseph G. Lindsey did include the said judgment in his schedule of assets, it was done in a parenthesis, so included among other doubtful items, and so obscurely expressed, that the deception was calculated to elude observation; that thereby this defendant does believe the said judgment was fraudulently secreted in his own, or in the hands of some other person, thus avoiding the scrutiny of the court *of the court* of bankruptcy. And this defendant states, as matter of confirmation of this view, that the application of said Joseph G. Lindsey to the assignee of Bissell and Carville for payment, and also to this defendant for repayment to him of money paid on said judgment, were made some time subsequent to his discharge from bankruptcy.

And this defendant in conclusion says, that there is no other matter, cause, or thing in said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly prays *prays* to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN S. BENNETT, *in pro. per.*

STATE OF ALABAMA,
Dallas county.

Before me, an acting justice of the peace in and for said county, personally appeared the above named John S. Bennett, who, being duly sworn, on his oath saith, that the matters and things in his foregoing answer set forth and contained, which are therein set forth as of his his own knowledge are true, and those which are stated of his information and belief only, he believes to be true.

JOHN S. BENNETT.

Sworn to and subscribed before me, this 28th day of August, 1846. J. McP. LEE, *J. P.*

Filed, September 9th, 1846.

JOHN FITTS, *Clerk.*

And afterwards, to wit, on the 16th day of March, in the year of our Lord one thousand eight hundred and forty-seven, the following alias subpœna issued out of the office of the clerk of said court against the defendant, Henry S. Atwood, to wit:

Alias vs. Atwood.

United States of America, circuit court of the United States, for the fifth judicial circuit, and southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded, as before, to summon Henry S. Atwood, who is a citizen of the State of Alabama, to be and appear before the hon. the circuit court aforesaid, at the place of holding said court, at Mobile, at rules, to be held in the office of the clerk of the said court on the first Monday of October next, to answer the bill of complaint of Lewis Rogers, filed in said court on the twenty-sixth day of March, A. D. 1846, praying an injunction, &c. Herein fail not, and have you then and there this writ.

Witness the hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this first Monday of March, in the year of our Lord one [L. S.] thousand eight hundred and forty-seven. Issued the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-seven.

Attest: JOHN FITTS,
Clerk C. C., sou. district of Alabama.

I do hereby appoint E. H. Cook my deputy to execute and return this process.

March 16th, 1847.

J. G. LYON, *U. S. marshal.*

Marshal's return.

Received 16th March, 1847; not found, April 26th, 1847.

J. G. LYON, *U. S. marshal.*

And afterwards, to wit, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and forty-seven, the following pluries subpœna issued out of the office of the clerk of said court against the said defendant, Henry S. Atwood, to wit:

Pluries vs. Atwood.

United States of America, circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to summon Henry S. Atwood, who is a citizen of the State of Alabama, to be and appear before the honorable the circuit court aforesaid, at the place of holding said court at Mobile, at rules to be held in the office of the clerk of the court aforesaid,

on the first Monday of October next, to answer the bill of complaint of Lewis Rogers, filed in said court on the twenty-sixth day of March, A. D. 1846, praying an injunction, &c.; herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this first Monday of August, in the year of our Lord one thousand eight hundred and forty-seven. Issued the sixteenth day of August, in the year of our Lord one thousand eight hundred and forty-seven.

Attest: JOHN FITTS,
Clerk C. C., southern district of Alabama.

The defendant is required to enter his appearance on or before the first Monday of October next, otherwise the bill will be taken as confessed.

JOHN FITTS, *Clerk.*

Marshal's return.

Received 19th August, 1847; executed September 6, 1847.
J. G. LYON, *U. S. M.*
By E. H. COOK, *Deputy.*

Whereupon, afterwards, to wit, on the eighteenth day of December, in the year of our Lord one thousand eight hundred and forty-seven, the defendant, Henry S. Atwood, filed his separate answer to said bill of complaint, in the words and figures following, to wit:

Answer of defendant Atwood.

United States of America, circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

The separate answer of Henry S. Atwood to the bill of complaint of Lewis Rogers, in said court, against this defendant and others. This respondent, for answer thereto, or to so much thereof as he is advised is material for him to make answer unto, answereth and saith, that he claims an interest in said judgment against John S. Bennett to the amount of $2,500, or thereabouts, including interest, probably a little more than that amount. That it was transferred to respondent in the latter part of 1843, or about the first of 1844, by said Lindsey for the amount of a note due to this respondent from said Lindsey and one Andrews, on which respondent had commenced suit in Monroe county against said Lindsey and said Andrews. Respondent's interest in said judgment was acquired after the bankrupcy of said Lindsey. That he does not now remember that he ever saw any evidence of title to said judgment in said Lindsey from said Rogers and Gray, or from either of them, but he knew that Lindsey had title to it from said Hunter. Respondent says he made no pretence whatever at the time he made the

said purchase of said land; and that there is no doubt but that he did purchase said land for the purpose of securing, as far as he could, his interest in said judgment. Respondent claims to have the interest aforesaid in said judgment against said Bennett, and to hold the same by virtue of an assignment or transfer to that extent from said Lindsey. Respondent paid no money to said Lindsey at the time of said transfer, but that he had expended some money in the prosecution of the claims against Bennett, and that the debt due to him from Lindsey, which was the consideration of said transfer, was a money or cash transaction previously existing. Respondent does not recollect precisely when said debt from Lindsey originated, but it was before said Lindsey's bankruptcy. The said debt due from Lindsey to respondent was for the sale of lands from respondent to Lindsey. Respondent, by the direction of Lindsey, gave a bond for titles to a man by the name of Cood, of Virginia. Lindsey gave to respondent his note with one Andrews as his security for about two thousand dollars, which note has never been paid. It was the consideration of the transfer to respondent of the interest in said judgment aforesaid. At the time of the sale of said land there was no understanding between said Lindsey and this respondent whatever, further than that respondent was to attend said sale, and make said land bring as much as possible. The price at which said land was sold was grossly inadequate to its value. It, however, would have been bought and paid for by a person at the sale, but for the fact that one Col. Dawson, of Dallas county, appeared at the sale and announced himself as the agent of the said Bennett, and in his name forbid the sale, saying that whoever bought it would purchase a law suit. Respondent paid to the marshal of this district the sum of one hundred and six dollars; but does not know how that money has been applied. This respondent further states, that said Bennett has filed his bill in equity in Wilcox county, to compel him to reconvey the land purchased at said marshal's sale, which said bill is still pending. Respondent further states that the paper hereto attached, marked A, is the original transfer of said judgment against the said defendant Bennett to this respondent. Respondent has perused the answer to bill of complaint in this case, filed by said Lindsey, and believes the same to be true, so far as the facts therein stated have come to his knowledge. And he demurs to said bill for want of proper parties, and for want of equity.

And having fully answered, respondent prays to be hence dismissed, with his proper costs and charges in this behalf expended.

LOCKWOOD & HITCHCOCK,
Solicitors for H. S. Atwood.

UNITED STATES OF AMERICA,
Southern district of Alabama.

Before me, Sidney T. Douglass, a justice of the peace for the county of Mobile, and State of Alabama, personally appeared Henry

S. Atwood, who being duly sworn says, that the facts set forth in the foregoing answer are true, so far as they come within his knowledge; and that such facts as he states on his belief he believes to be true.

HENRY S. ATWOOD.

Sworn and subscribed to before me, December 18th, 1847.

SIDNEY T. DOUGLASS, *J. P.*

The paper referred to in the foregoing answer, as marked exhibit A, is not on file among the papers in this cause.

——— ———, *Clerk.*

And afterwards, to wit, on the eighteenth day of April, in the year of our Lord one thousand eight hundred and forty-nine, being a day of a term of said court, begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and forty-nine, (until which time this cause was legally continued.)

Continuances, motion, and order.

This day came the said defendants, by their solicitors, and submit a motion to dismiss this suit for want of a replication. Whereupon it is ordered by the court that the complainant file his replication in thirty days.

And afterwards, to wit, on the sixteenth day of May, in the year of our Lord one thousand eight hundred and forty-nine, the complainant filed in said court his general replication, in the words and figures following, to wit:

General replication.

In chancery.

The replication of Lewis Rogers, complainant, to the answers of Joseph G. Lindsey, John S. Bennett, and Henry S. Atwood, defendants in this cause, now pending in the circuit court of the United States, for the fifth judicial circuit, State of Alabama.

This repliant, saving and reserving unto himself all and all manner of advantage and exception to the manifold insufficiencies of the said answers, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatever in the said answers contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant

is and will be ready to prove, as this honorable court shall direct. And he humbly prays, as in his said bill he hath already prayed.

STEWART & EASTON,
Solicitors for complainant.

Filed May 16th, 1849.

JOHN FITTS, *Clerk.*

Motion at rules.

At rules, September 3d, 1849.

A motion is made on behalf of the defendant to extend the time for taking testimony until the fourth Monday of November next; which motion is allowed both parties.

At chambers, 3d September, 1849.

JOHN GAYLE, *Judge, &c.*

Order.

At chambers, 4th Dec., 1849.

In this cause it is ordered, that the time for taking depositions be extended to each party till the first day of the next ensuing term.

JOHN GAYLE, *Judge, &c.*

And afterwards, to wit, at a term of said court, begun and held in and for said district, at Mobile, on the fourth Monday of December, A. D. 1849, the following proceedings were had, to wit:

Order and continuance.

This cause being called, it is ordered that the testimony in this cause be published. And the plaintiff having made an application for a continuance, the same is allowed, on condition that this cause shall be ready for a hearing and brought on to be heard at the next term of this court. The court authorizes the parties to take testimony.

Testimony.

UNITED STATES OF AMERICA,
Southern district of Alabama.

Commission for defendants.

Circuit court United States, to R. C. Torrey, esq.

Having full confidence in your integrity, we have appointed you, and do give you full power and authority, to examine A. B. Cooper, Wm. P. Leslie, and Hickman Fowler, as witnesses in a cause in chancery, pending in the circuit court of the United States, for the southern district of Alabama, in the cause pending in the said court, wherein Lewis Rogers is plaintiff, and Joseph G. Lindsey and others

are defendants; and we do give you full power to examine each and either of the witnesses aforesaid on their oaths, upon the interrogatories attached to this commission, and do require you, when you have taken the answers of said witnesses on their oaths to said interrogatories, to seal the same with the interrogatories and commission, and to return them to the said circuit court.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, second Monday of April, A. D. [L. S.] 1849.

Issued 15th day of October, A. D. 1849.

JOHN FITTS,
Clk. C. C., so. dist., Ala.

The appointment of commissioner is confirmed, 15th October, 1849.

JOHN GAYLE,
Judge of dist. cts. of Ala.

THE STATE OF ALABAMA.

Circuit court of the United States, southern district. In chancery.

LEWIS ROGERS
vs.
JOSEPH G. LINDSAY.

Interrogatories.

Interrogatories for A. B. Cooper, Wm. P. Leslie, and Hickman Fowler, witnesses for the defendants in this cause.

1. Did you know the circumstances of *of* James Tomlinson, Stephen Andrews, John Davis, and Adam Carson, in the year 1839, and in the spring of 1840; where did they reside; what amount of property did they have in their possession; was their property in lands and slaves, or in what did it consist; what was their condition as to solvency?

2. If you know of any fact material to the parties to this cause or either of them, or material to the questions at issue in the cause, or to explain your testimony, answer the same fully and at large.

CAMPBELL & CHANDLER,
For defendant.

Filed October 3d, 1849.

JOHN FITTS, *Clerk.*

Pursuant to a commission issued from the office of the clerk of the circuit court of the United States, for the southern district of Alabama, bearing date the 15th day of October, 1849, and directed to R. C. Torrey, I, Rufus C. Torrey, the commissioner aforesaid, hereby certify, that I called and caused to come before me, at my office in the town of Claiborne, on Tuesday, the sixth day of November, the said Hickman Fowler, Aaron B. Cooper, and Wm. P. Leslie, and being

duly cautioned, examined, and sworn, they severally answer on oath as follows, that is to say, the said Hickman Fowler answers as follows:

Answer of H. Fowler.

To the 1st interrogatory he says: He was acquainted with the circumstances of Tomlinson and Andress, but was not acquainted with those of Davis and Carson; Tomlinson resided in Conecuh county; owned a large estate in lands and negroes; twelve or thirteen hundred acres of land, and he thinks he owned more than fifty negroes; he was then considered very solvent. Andress lived in Monroe county; he owned a very valuable tract of land, and between thirty and forty negroes; he was also regarded as very solvent.

To the 2d interrogatory he says: He can answer nothing. And further he saith not.

H. FOWLER.

Answer of A. B. Cooper.

And the said A. B. Cooper saith, to the 1st interrogatory: That he only knew the circumstances of James Tomlinson in 1839 and 1840 by report; he was reported to be wealthy; witness knows that about 1847, under certain executions, several slaves and some land was sold as the property of said Tomlinson; Tomlinson resided in Conecuh county. He further saith that he knew John Davis, Stephen R. Andress, and Adam Carson, in 1839 and 1840; they all resided in Monroe county in 1839, as deponent believes; John Davis removed from Monroe county about January, 1840, as deponent believes; about the time John Davis removed from Monroe county he sold his land for about $6,000; he owned several slaves, and deponent thinks his property at that time was worth ten or fifteen thousand dollars.

Adam Carson, in 1839 and 1840, had several slaves; the number not known to deponent. Deponent thinks the property owned by Carson, at the time above stated, was worth six to eight thousand dollars. Stephen R. Andress owned a tract of land, in 1840, and slaves. Deponent cannot say, of his own knowledge, what was the value of his property; he knows that, in 1840, the land was sold and some of his slaves.

To the second he saith, that in 1844, he, as attorney for E. L. Smith, obtained a judgment against Tomlinson; and about the same time another judgment in favor of Thomas Harne was obtained against Tomlinson. That, under one or both of these judgments, Tomlinson's property was sold. The number of the slaves sold deponent does not know, but there was a considerable number.

He saith that Carson left Alabama about 1845, and carried his slaves with him; and further he saith not.

A. B. COOPER.

Answer of W. P. Leslie.

And the said Wm. P. Leslie says, that he knew Davis, Andress, and

Tomlinson in 1839 and 1840. That he did not know anything of their circumstances of his own knowledge. That, in 1841 or 1842, he, as attorney for E. L. Smith, obtained judgment against Tomlinson for upwards of three thousand dollars, which was paid. This was independent of the judgment of which Mr. Cooper speaks.

WM. P. LESLIE.

Now I, Rufus C. Torrey, the commissioner aforesaid, do further certify, that the several preceding answers were taken down by me, or in my presence, at the time and place aforesaid; that said witnesses read the answers over after they were written; that they assented, swore to, and subscribed the same in my presence. And I now return the same, duly sealed up, together with the commission aforesaid, to the clerk of the said circuit court, as my full execution of the said commission.

Witness my hand and seal, this sixth day of November, A. D. 1849.

RUFUS C. TORREY, [SEAL.]
Commissioner.

Commission for defendants.

UNITED STATES OF AMERICA,
Southern district of Alabama.

Circuit court, U. S., to John Bonner, esqr.

Having full confidence in your integrity, we have appointed you, and do give you full power and authority, to examine Charles D. Hunter, a witness in a cause in chancery pending in the circuit court of the United States, for the southern district of Alabama, in the cause pending in said court, wherein Lewis Rogers is plaintiff, and Joseph G. Lindsey and others are defendants; and we do give you full power to examine the witness aforesaid, on his oath, upon the interrogatories attached to this commission; and do require you, when you have taken the answers of said witness on his oath to said interrogatories, to seal the same with the interrogatories and commission, and to return them to the said circuit court.

Witness the hon. Roger B. Taney, chief justice of the Supreme [L. S.] Court of the United States, second Monday of April, A. D. 1849.

Issued 15th day of October, A. D. 1849.

JOHN FITTS,
Clk. C. C., So. Dis. Ala.

The appointment of commissioner is confirmed. 15 October, 1849.

JOHN GAYLE,
Judge district court, Alabama.

CIRCUIT COURT, U. S.,
Southern district of Alabama.

LEWIS ROGERS
vs.
JOSEPH G. LINDSAY et al. } In chancery.

Interrogatories.

Interrogatories to be submitted to Charles D. Hunter, a material witness for the defendants in this cause.

1. Did Joseph G. Lindsay assign to you any claim held by him to a judgment in the circuit court of the United States, for the southern district of Alabama, in favor of Rogers & Gray against Bissell & Carville and John S. Bennett; when did he make that assignment; on what consideration was it made; and when and on what consideration was a reassignment of the claim made to him?

CAMPBELL & CHANDLER,
For defendants.

Notice.

Messrs. STEWART & EASTON.

Take notice, that interrogatories have been filed in the office of the clerk of the circuit court of the United States, for the southern district of Alabama, for Charles D. Hunter, and they will remain to enable you to cross examine the parties by filing interrogatories.

CAMPBELL & CHANDLER,
For defendant.

Answer of C. D. Hunter.

STATE OF ALABAMA,
Dallas county.

By virtue of a commission issued from the office of the clerk of the circuit court of the United States, for the southern district of Alabama, the fifteenth day of October, 1849, bearing date the day and year aforesaid, directed to John Bonner, and appointing and authorizing him to take the answer of Charles D. Hunter to certain interrogatories annexed to said commission, to be read in evidence on the trial of a suit in said court pending, wherein Lewis Rogers is plaintiff, and Joseph G. Lindsey and others are defendants. Now, I, the said John Bonner, commissioner, having called and caused to come before me, at my office in Dallas county, Charles D. Hunter, and having examined, cautioned, and sworn the said Charles D. Hunter, that the answers which he shall give and make to the said interrogatories shall be the whole truth, and nothing but the truth, the said Charles D. Hunter deposeth and answers, as follows:

To the first and only interrogatory. In the fall of 1841 Joseph G.

Lindsay did assign to me a claim and judgment against Bissell & Carvill and John S. Bennett, in the circuit court of the United States, at Mobile, for the southern district of Alabama, in favor of Rogers & Gray, consideration a section of land in Wilcox county, Alabama. In the spring of 1844 I received Joseph G. Lindsay's note for said claim and judgment, and reassigned them back to Joseph G. Lindsay.

CHARLES D. HUNTER.

Now, I, John Bonner, the commissioner, do hereby further certify, that the foregoing answer was taken down and written by myself, and in the words of said witness; that they were afterwards read over to him; that he assented, swore to, and subscribed the same in my presence at the time and place herein before mentioned; that I am not of kin, counsel, or attorney to either of the said parties, nor interested in the event of said suit; and I enclose the same, together with the commission aforesaid, to the clerk of said court, from whence the same emanated, as my full execution of said commission.

In witness whereof I hereunto set my hand and affix my seal, this 17th day of November, A. D. 1849.

JOHN BONNER, [L. S.]
Commissioner.

Commission for defendants.

UNITED STATES OF AMERICA,
Southern district of Alabama.

Circuit court of the United States.

To Alexander McKinstry [and] Malcomb J. McRae, esqs., or either of you: Having full confidence in your integrity, we have appointed you, and do give you full power and authority, to examine Wm. C. Easton, Lyman Gibbons, and David Files, as witnesses in a cause in chancery pending in the circuit court of the United States, for the southern district of Alabama, in the cause pending in said circuit court, wherein Lewis Rogers is plaintiff, and Joseph G. Lindsay and others are defendants; and we do give to each of you full power to examine each and either of the witnesses aforesaid, on their oaths, upon the interrogatories attached to this commission; and do require you, when you have taken the answers of said witnesses on their oaths to said interrogatories, to seal the same with the interrogatories and commission, and to return them to the said circuit court.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, second Monday of April, 1849.
[L. S.] Issued 15th October, 1849.

JOHN FITTS,
Clerk C. C., southern district of Alabama.

The appointment of commissioners is confirmed.
15th October, 1849.

JOHN GAYLE,
Judge district court, &c.

LEWIS ROGERS
vs.
JOSEPH G. LINDSAY, Henry S. Atwood, et al.

In the court of chancery, circuit court of the United States, southern district of Alabama.

Interrogatories.

Interrogatories for Lyman Gibbons and David Files, witnesses for the defendant in this cause.

Interrogatories, &c., to Gibbons, &c.

1. Did you see any paper made by Rogers and Gray, or Lewis Rogers, in favor of Joseph G. Lindsay, by which he was authorized to manage and control certain judgments in the circuit court of the United States, for the southern district of Alabama, among others against John S. Bennett, in favor of said Rogers and Gray; state when you saw that paper, and the contents of it, as near as you can recollect; will you state whether the paper purported to be an assignment of said judgments; or whether there was any condition or limitation of the powers given? Answer fully in regard to the same.

2. Will you state if you, at any time, had a conversation with Lewis Rogers, or Rogers and Gray, relative to his settlement with Joseph G. Lindsay; will you state if, in any conversation with him, he denied the fact of his having transferred to Lindsay the control of these papers, inclusive of the judgment above mentioned? Please state whether he admitted in such conversations the fact of a transfer; state all that you know on the subject of the transfer, and all you heard from Rogers and Gray.

3. If you have not seen such a paper as is described in the first interrogatory, please state the contents of any paper of theirs in favor of Joseph G. Lindsay relative to the judgments of Rogers and Gray in the court aforesaid; will you state if any and what action was taken on that paper; will you state who had it, and when and where you saw it, and the objects for which it was shown to you? State who was present; state all facts in regard to it.

4. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

Filed October 3d, 1849. CAMPBELL & CHANDLER,
For defendants.

Circuit court of the United States, for southern district of Alabama.

LEWIS ROGERS
vs.
JOSEPH G. LINDSAY et al. } In chancery.

Interrogatories to W. C. Easton.

Interrogatories to Wm. C. Easton, a witness for the defendant in this cause.

1. Will you state if entries on the execution docket of the circuit court of the United States, for the southern district of Alabama, to the effect following, viz: April 13, 1841, "Mr. J. G. Lindsay is fully authorized by the plaintive to control this case;" made in certain cases in favor of Rogers and Gray against Joseph G. Lindsay, were made by you; were you an attorney of record in the said cases?

2. Will you attach to your answer to this interrogatory the original or a copy of the letter produced to you, or received by you, under which you made that entry on the execution docket aforesaid; if there were more papers than one, will you attach the originals or copies of each?

3. Will you state if you delivered at the same time, or at any time before or after, under the same authorities, a note of James H. Sylvester, and a note of Samuel W. Oliver, being the first for $2,846.06, and the other for $957.95 to Joseph G. Lindsay? If Joseph G. Lindsay gave you any receipt at the time, please annex a copy to your answer to this interrogatory.

4. Will you set forth in your answer to this interrogatory whether the entry of the 13th April aforesaid was made in reference to judgments recovered against said Lindsay, as endorser of the notes held by Rogers and Gray, and which are described in the schedule attached to the original bill in this cause; will you state whether the same control which was given to the said Lindsay in the said five causes against him was not extended to him in all cases on the said paper? State what difference was made, if any, in the paper under which you acted.

5. Did Joseph G. Lindsay then, or at any other time, make you, or your firm, a payment for fees, commissions, or expenses in the said causes; state what payment he made to you, and at what time it was made, and by what authority you demanded the payment from him; did you require it by any thing stated in the letter you received from Rogers and Gray, or Lewis Rogers, previously, or the paper he exhibited by Lindsay to you? Set forth the written authority or agreement by which you felt authorized to demand payment from him.

CAMPBELL & CHANDLER,
Attorneys for defendants.

Filed October 3d, 1849.

JOHN FITTS, *Clerk.*

UNITED STATES OF AMERICA,
State of Alabama, southern district.

The deposition of Lyman Gibbons and William C. Easton, taken before me, Alexander McKinstry, commissioner, by virtue of the annexed commission, issued from the honorable the circuit court of the

United States of America, for the fifth judicial circuit, in the southern district of Alabama, to be used in a certain cause pending in said court, wherein Lewis Rogers is plaintiff, and Joseph G. Lindsay is defendant. And the said witnesses having been by me duly and carefully examined, cautioned, and sworn to testify the truth, and the whole truth, in answer to the interrogatories accompanying the said commission and hereto annexed, did depose and answer as is herein set forth.

CIRCUIT COURT OF THE UNITED STATES,
Southern district, Alabama.

LEWIS ROGERS
vs.
JOSEPH G. LINDSAY et al.

Answers of W. C. Easton.

Answer of William C. Easton to the interrogatories filed in this cause in behalf of the defendants.

1st interrogatory. He says that Stewart and Easton, attorneys at law, were attorneys of record in the cases referred to, of which firm deponent is and was then a member; that entries were made by deponent on the 13th April, on the execution docket of said court, in certain cases of Rogers and Gray vs. Joseph G. Lindsay. A list of the cases and of the entries made by this deponent will be found appended to this deposition, marked A.

These cases, it will be seen, are numbered 1638, 1639, 1640, 1641. On examining the docket, this deponent finds that the entry in each of of them, in the handwriting of deponent, is in the following words: "April 13, 1841. Mr. J. G. Lindsay is fully authorized by plaintiff to control this case. Stewart and Easton, plaintiff's attorneys." The entry made in No. 1637 is not in deponent's handwriting, and is signed by D. Files, clerk. It may have been authorized by deponent; as to this, deponent cannot recollect.

2d interrogatory. Deponent annexes hereto a copy of the only authority ever received by Stewart and Easton, so far as this deponent is informed and believes, which authorized the entries mentioned. This paper is hereto appended, marked B. And this deponent saith further, that the history of this paper and the manner in which it got into the possession of Stewart and Easton, is as follows: Some time before the date of the paper referred to, Rogers and Gray had assigned to the Farmers' Bank of Virginia all the claims in Stewart and Easton's hands for collection, among them the claims in judgment against Lindsay and others, mentioned in the bill filed in this cause. The Farmers' Bank of Virginia made the Planters and Merchants' Bank of Mobile its agent here, and we were directed to pay into the latter bank any money we might collect upon the claims referred to. After that assignment took place, we heard no more from Rogers and Gray, or either of them.

Some time after the date of the paper, (exhibit B,) but before the

date of the entries before referred to, Mr. J. G. Lindsay called at our office and presented us with a paper, (from which the exhibit is copied,) and left it with us. This paper, which is still in our possession, purported to be a copy of one addressed by the Farmers' Bank of Virginia to the Planters and Merchants' Bank of Mobile. Deponent went to the Planters' Bank, and was there exhibited the original.

It will be seen that this paper is a relinquishment by the Bank in Virginia to Lewis Rogers, of the claims which Rogers and Gray had assigned to that bank, and that there is an endorsement on it by Lewis Rogers, (the complainant,) directing the Planters' Bank to hold the claims referred to subject to the order of J. G. Lindsay.

The paper referred to, and herewith exhibited, was the only authority that Stewart & Easton ever received from Mr. Lewis Rogers in relation to giving control to J. G. Lindsay of the claims referred to. *Now*, did Stewart & Easton ever receive any communication whatever from Mr. Lewis Rogers on the subject until within a few months prior to the filing of the bill in this cause. And this deponent will further say, that Stewart & Easton did not stop to inquire about the extent of the authority which Rogers may have intended to confer on Lindsay; it was sufficient for them that Rogers had subjected his claims in their hands to Lindsay's control by the paper referred to. The paper handed to us by Lindsay, deponent believes is in the handwriting of Lindsay himself.

3d interrogatory. The note of Sylvester referred to in this interrogatory, it appears from a memorandum on Stewart & Easton's docket, was handed to J. G. Lindsay in November, 1840. The note of S. W. Oliver, it appears from a similar memorandum, the clerk of the court was directed to give to Mr. Lindsay on the 16th November, 1840.

Deponent does not know that Lindsay gave any receipt for those notes; he does not believe any receipt was given.

Interrogatory 4. The entries of April 13, 1840, speak for themselves. Those entries were made in pursuance of what we believed to be the authority contained in the paper before referred to. The construction which deponent and his partner gave to the authority then produced by Mr. Lindsay, would have induced us without doubt to make any order as attorney's that he might have required, had we consented to act as the attorneys of Mr. Lindsay.

Interrogatory 5. On the 16th November, 1840, as it appears from the books of Stewart & Easton, they received from J. G. Lindsay a payment of five hundred dollars in the following manner:

An acceptance of Bull & Files for - - - - - -	$350
Stewart & Easton giving Lindsay in cash fifty dollars - -	50
	$300
J. G. Lindsay's own note for - - - - - -	200
	$500

This note of Lindsay's was afterwards transferred by Stewart &

Easton to D. Files, clerk of this court, and we presumed it was paid. Deponent believes that *that* when Mr. Lindsay first presented the letter (exhibit B) to Stewart & Easton, he spoke about his paying costs and fees. And this subject, was, deponent believes, alluded to more than once afterwards by Lindsay, in conversation with deponent. There was no other authority for Stewart & Easton to demand fees from Mr. Lindsay than the fact that the control of the business had been given to him by Mr. Rogers; this we deemed enough for us. We had never demanded any thing from Rogers, and were willing to wait, so far as he was concerned, till something was made; but as another had the contract of the cases, we deemed it proper that he should pay us, and thus it was that we demanded and received pay. We were not willing in fact to give Mr. Lindsay control of the cases, so far as we could help it, without getting some compensation for what we had done. The authority contained in exhibit B is the only authority we ever had to demand or to receive compensation for professional services, in the cases of Rogers & Gray, from J. G. Lindsay. Stewart & Easton, or deponent, never received a letter from Rogers & Gray on the subject, nor did they ever receive a letter from Lewis Rogers, or his personal instructions or authority in relation to this matter.

WM. C. EASTON.

Exhibit B.

FARMERS' BANK OF VIRGINIA,
June 13, 1840.

SIR: I beg to refer you to the letter of our cashier, J. G. Blair, of the 25th January last, and to assure you that the claims therein referred to, as in a course of collection for Messrs. Rogers & Gray, have been by this bank relinquished to Mr. Lewis Rogers, and that the same are subject to him or his order.

I am, respectfully, yours, &c.
H. McFALIN, *Prest.*

To. D. M. RIGGS, cashier, Mobile.

Copy.

FOR STEWART & EASTON, Mobile.

Copy.

The president or cashier of the Planters and Merchants' Bank will please hold, subject to the order of Mr. J. G. Lindsey, all the debts referred to in the enclosed letter from Mr. McFarlin, except the two drafts of Mr. Collier Minge upon the Messrs. Ellicotts, of Baltimore, which when collected please place to my credit.

LEWIS ROGERS.

Richmond, June 13, ~~1840~~ 1840

Copy.

GENTLEMEN: You will please cause all the executions stayed until further orders from me.

13 June, 1840.

JOS. G. LINDSAY.

I, Alexander McKinstry, commissioner, do hereby certify, that this is the exhibit referred to in the answer of William C. Easton and Lyman Gibbons, as exhibit B, and attached by me to said deposition.

ALEXANDER McKINSTRY,
Commissioner.

Exhibit A.—*Copied from the execution docket of the United States circuit court, returnable to April term, 1840.*

1637	Rogers & Gray vs. Joseph G. Lindsey.	Damages.....$1,059 57 Int. from 11 Apr., 1839. Clerk's fees..... 25 00 Marshal's fees..... 12 00 Attorney's fee..... 15 00	Alias fieri facias issued 23d Oct., 1840, by order of, and delivered to, J. G. Lindsey.	Order of Stewart & Easton as follows, to wit, April 15th, 1841, Mr. J. G. Lindsey is fully authorized by the plaintiff to control this case. Stewart & Easton. Revoked. Attest: David Files, clerk.	Satisfaction erased by J. G. Lindsey and fi. fa. issued 17th May, 1842. See page 384. Attest: David Files, clerk.
1638	Rogers & Gray vs. Joseph G. Lindsey.	Damages.....$3,146 25 Int. from 11 Apr., 1839. Clerk's fees..... 25 00 Marshal's fees..... 12 00 Attorney's fee..... 15 00	Alias fieri facias issued 23d Oct'r, 1840, by order of, and delivered to, J. G. Lindsey.	April 14th, 1841, Mr. J. G. Lindsey is fully authorized by the plaintiff to control this case. Stewart & Easton, plaintiff's attorneys. Plu. fi. fa. issued 19th May, 1842. Attest: D. Files.	Satisfied 18th March, 1844. J. G. Lindsey. Issue plu. fi. fa. Jos. G. Lindsey.
1639	Rogers & Gray vs. Joseph G. Lindsey.	Damages.....$3,556 45 Int. from 11 Apr., 1839. Clerk's fees..... 25 00 Marshal's fees..... 12 00 Attorney's fee..... 15 00	Alias fieri facias issued 23d Oct'r, 1840. Same.	1841, April 13th, Mr. J. G. Lindsey is fully authorized by the plaintiff to control this case. Stewart & Easton, plaintiff's attorneys. Plu. fi. fa. issued 19th May, 1842. See page 234. Attest: D. Files, clerk.	Satisfied 18th March, 1844. Issue plu. fi. fa. 25 May. Jos. G. Lindsey.
1640	Rogers & Gray vs. Joseph G. Lindsey.	Damages.....$4,487 61 Int. from 11 Apr., 1839. Clerk's fees..... 25 00 Marshal's fees..... 12 00 Attorney's fee..... 15 00	Alias fieri facias issued 23d Oct'r, 1840. Same.	1841, April 13, Mr. J. G. Lindsey is fully authorized to control this case. Stewart & Easton, plaintiff's att'ys. Plu. fi. fa. issued 19th May, 1842. See page 234. Attest.	Satisfied 18th March, 1844. J. G. Lindsey. Issue plu. fi. fa.. Jos. G. Lindsey.
1641	Rogers & Gray vs. Joseph G. Lindsey.	Damages.....$1,834 98 Int. from 11 Apr., 1839. Clerk's fees..... 25 00 Marshal's fees..... 12 00 Attorney's fee..... 15 00	Alias fieri facias issued 23d Oct'r, 1840.	1841, April 13th, Mr. J. G. Lindsey is fully authorized to control this case. Stewart & Easton, plaintiff's attorneys. Plu. fi. fa. issued 19th May, 1842. See page 234. Attest: D. Files, clerk.	Satisfied 18th March, 1844. J. G. Lindsey. Issue plu. fi. fa. Jos. G. Lindsey.

I, Alexander McKinstry, commissioner, do hereby certify, that this is the exhibit referred to in the answers of William C. Easton, as exhibit A, and attached by me to said deposition. ALEX. McKINSTRY, *Comr.*

Rogers vs. Lindsey et al.

The answer of Lyman Gibbons to the said interrogatories.

1st. I did see such a paper as that referred to in this interrogatory in the hands of Joseph G. Lindsay, in the winter of 1840 and 1841; my impression is, that it was in the month of December, 1840, or in the month of January, 1841, but I cannot be certain as to the precise time; it was about that; the signature to the paper, according to my recollection now, was in the handwriting of Lewis Rogers; I knew his handwriting, having previously corresponded with him on matters of business; my impression now is, that the signature was in the name of Lewis Rogers; I attached no importance to this particular form, as I knew that the firm of Rogers and Gray had been dissolved, and that all the papers referred to in the above mentioned, were under the control of Lewis Rogers, as liquidating partner of said house.

The contents of the paper, as I now recollect, imported that all of the papers and assets referred to, in the instrument referred to in the interrogatories, were, with some exceptions therein named, assigned and released to Joseph G. Lindsay unconditionally and without reserve; and that he was thereby authorized to assume and exercise ownership and control over them; amongst other papers there was one against John S. Bennett, according to my recollection; all of these papers were transferred by Joseph G. Lindsay to Rogers and Gray, in the summer of 1837, collaterally, to secure an indebtedness existing from Lindsay to said Rogers and Gray, amounting to some twenty-two thousand dollars. ($22,000.) Mr. Gray was in the city of Mobile at the date last aforesaid, with Lindsay, and the said transfer was made in my office in the city of Mobile, the said Gray acting as for the said firm of Rogers and Gray, and the said Lindsay acting for himself. Subsequently, to wit, in the summer or fall of 1840, as I understood from Lindsay, and afterwards from Rogers himself, all of these papers, with the exception of one in my hands for collection, to wit, one against Adam Carson, were retransferred back to Lindsay, and a new arrangement was made between Rogers and Lindsay by which the old debt of Lindsay to Rogers and Gray was to be paid; this note of Adam Carson, for upwards of three thousand dollars, ($3,000,) I had then collected, and paid over, or had so secured, that its ultimate payment was undoubted; I do not now recollect which. The paper produced to me in Mobile by Lindsay in the winter of 1841 or 1840, was confirmations of the Lindsay statement, and was afterwards confirmed by Rogers, as I shall state more fully in my answer to the next interrogatory.

2d. In the summer of 1841 I was in the city of New York, when Mr. Lewis Rogers sent for me to come to his office in Wall street, in said city. I went to his office and saw him; he then stated to me that he wished to make arrangements with me for the collection of a note against Mr. Lindsay, amounting to some fourteen or fifteen thousand dollars, which was then matured and unpaid. Mr. Rogers then stated that this note had grown out of the subsequent settlement above re-

ferred to, made with Lindsay in 1840, and by which the collateral papers above referred, had been reconveyed back to Lindsay, and complained very much that Lindsay had not paid this new note according to his promise. Mr. Rogers requested me then to take this note and settle it with Lindsay the best way that I could; I replied to Mr. Rogers, that I was confident that I could make nothing out of Lindsay by law, and that if he chose to let me take the note and open a negotiation with Lindsay for its settlement, I would forward to him from time to time whatever propositions he should make to me, and he, Rogers, must determine for himself whether he would accept them or not; that I would not take any responsibility upon myself whatever in reference to the note; there our conference ended; he did not choose to let me take the note on those terms, and nothing more passed between us upon the subject. The matters of fact stated to me by Rogers in my interview with him in 1841, were entirely in conformity with what Lindsay had previously stated to me on presenting the assignment of Rogers of the collateral papers above referred to. I did not doubt for a moment, either from the conversation of Lindsay, or from the conversation of Rogers, or from the inspection of the document shown to me by Lindsay, but that he, Lindsay, was the actual, sole, and bona fide owner of the papers referred to in the assignments; on the contrary, I was confident that he was so.

3d. I cannot now state with accuracy the wording of the transfer from Rogers to Lindsay of the papers referred to; I can only say the words were such as imported ownership of property; and said transfer gave to Lindsay sole and exclusive control of the papers referred to, with trust or limitation attached on its face. The paper was presented to me by Lindsay for the purpose of asking my advice as to how he should proceed to get the control of the papers, they then being in the hands of Messrs. Stewart and Easton, and who, as said Lindsay informed me, refused to give up to him the evidences of debt until their fees or charges should be paid. It was on questions of this nature that I first had occasion to examine the transfer above referred to.

As to what action was taken on that paper I cannot state of my own knowledge. I know that Lindsey did get the control of the papers, and, as I understood, by submitting to the demand of Stewart and Easton in the payment of their fees, I advised him that he would be compelled to do so. One of the papers, to wit, a note of James H. Sylvester for some twenty-seven or twenty-eight hundred dollars, was then in suit in the United States circuit court, and not in judgment. I became the purchaser of that paper from Lindsey for cash paid him. The note was handed me by Lindsey, or by Messrs. Stewart and Easton on Lindsey's order; I do not now recollect which; but the suit which was brought by Messrs. Stewart and Easton was handed over to me by them, and I assumed the management and control of it until final judgment, and the collection of the money.

4th. I have nothing further to depose, except that I have recently been shown an exhibit marked B, appended to the testimony of Wil-

liam C. Easton esq., taken in this cause. The order purporting to be from Lewis Rogers to the Planters and Merchants' Bank of Mobile, I believe is a correct copy of the original as shown to me by J. G. Lindsey, in the winter of 1840 and 1841. The original of which is the paper to which I refer in my answer to the first interrogatory. Further this deponent saith not.

L. GIBBONS.

And I, the said Alexander McKinstry, do hereby certify, that having caused the said Lyman Gibbons and Wm. C. Easton to come before me, on this the twentieth day of November, A. D. 1849, at my office, in the city of Mobile, the said [witnesses] were by me duly and carefully examined, cautioned, and sworn, separately and apart; that the answers of the said Gibbons were reduced to writing by me, read over by him carefully, and subscribed by him in my presence; that I am not of counsel or attorney for either or any of the said parties, nor in any wise interested in the event of the said suit; that the exhibits hereto attached marked A B, are the exhibits produced by William C. Easton, and are the exhibits referred to in his answers as exhibits A and B; that I have retained this commission in my possession, that I might seal up and deliver the *the* same to the clerk of the court.

Witness my hand and seal, at Mobile.

ALEX'R McKINSTRY,
Commissioner.

And afterward, to wit, on the seventeenth day of April, in the year of our Lord one thousand eight hundred and fifty, being a day of a term of said court, begun and held in and for said district, on the second Monday of April, at Mobile, in the year of our Lord one thousand eight hundred and fifty, the following proceedings were had in said cause, to wit:

Final decree.

LEWIS ROGERS
vs.
JOSEPH G. LINDSEY et al.

This cause came on to be heard on the bill, answers, exhibits, and proofs; and it is declared by the court, that the said plaintiff, by his contract with the defendant, Joseph G. Lindsey, assigned and transferred the judgment in this court in favor of Rogers & Gray against John S. Bennett to him, said Lindsay; and that he, and the assigns under him, are entitled to the money therefrom; it is therefore ordered and decreed, that the plaintiff's bill be dismissed, and that he pay the costs.

Appeal.

Whereupon, the plaintiff prays an appeal to the next term of the

Supreme Court of the United States, from the said decree, which is granted, upon his executing a bond in the penalty of five hundred dollars, with John E. Uhlhorn as his security, conditioned according to law.

Bond.—Appeal bond.

Know all men by these presents, that we, Lewis Rogers and John E. Uhlhorn, are held and firmly bound unto Joseph G. Lindsay, Henry S. Atwood, and John S. Bennett, of the State of Alabama, in the penal sum of five hundred dollars, lawful money of the United States, well and truly to be paid to the said Joseph G. Lindsey, Henry S. Atwood, and Joseph S. Bennett, their executors, administrators, and assigns, and to be raised out of our and each of our goods, chattels, lands, tenements, and effects; and for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, and severally, firmly, by these presents. Sealed with our seals, at Mobile, on the eighteenth day of April, in the year eighteen hundred and fifty.

The condition of the above obligation is such, that whereas on a certain bill, filed by said Lewis Rogers against Joseph G. Lindsey, Henry S. Atwood, and John S. Bennett, in the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, praying relief in equity, and on the hearing of said bill, at the present term of said circuit court, before the honorable John Gayle, judge of said court, a decree was rendered in favor of said defendants, dismissing said bill of the said Lewis Rogers at the costs of said complainant.

And whereas the said Lewis Rogers, complainant, hath prayed an appeal from the said decree in said cause rendered to the Supreme Court of the United States, returnable to the next term of the said Supreme Court, which appeal has been allowed by the said John Gayle, judge, presiding in the said circuit court, on the filing of a bond in the penal sum of five hundred dollars, with security.

Now, the condition aforesaid is such, that if the said Lewis Rogers shall prosecute his said appeal to effect, and shall pay all costs and damages sustained by said Lindsey, Atwood, and Bennett, or either of them, by reason of the wrongful suing out said appeal, then this obligation to be void, else of full force, virtue, and effect.

LEWIS ROGERS, [SEAL.]
By his attorney GEORGE N. STEWART,
J. E. UHLHORN. [SEAL.]

Filed 18th April, 1850.
Attest: JOHN FITTS, *Clerk*.

I, John Fitts, clerk of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, do hereby certify, that the foregoing one hundred and nineteen pages and nine lines, together with all matters appended thereunto, contain a full, true, and

perfect transcript of the record and proceedings had in a certain cause, lately pending and determined on the equity side of said court, wherein Lewis Rogers was complainant, and Joseph G. Lindsey, Henry S. Atwood, and John S. Bennett, defendants, as the same remain of record and on file in my said office.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand, and affixed the seal of said circuit court, this fourth day of December, in the year of our Lord one thousand
[SEAL.] eight hundred and fifty.

JOHN FITTS,
Clerk C. C., southern dist., Alabama.